

***United States Court of Appeals
for the Second Circuit***



APPENDIX

Consolidated Appeals:
77-5019, 77-5022

77-5019

Service Copy

United States Court of Appeals

For the Second Circuit



In the Matter of

STIRLING HOMEX CORPORATION, *Debtor*

GREGORY JEZARIAN, GERALDINE JEZARIAN, LONETOWN COMPANY, HARRY E. JONES, ALECK GOLDBERG, as Custodian for Mark Goldberg, and MRS. D. WINDSOR DIXON,

Appellants,

FRANK G. RAICHLE, Reorganization Trustee; LINCOLN FIRST BANK OF ROCHESTER; CHEMICAL BANK; THE CHASE MANHATTAN BANK, N.A.; THE FIRST NATIONAL BANK OF CHICAGO; MARINE MIDLAND BANK; and THE TRAVELERS INDEMNITY COMPANY,

Appellees.

Appeal from the United States District Court
for the Western District of New York

JOINT APPENDIX

VOLUME I OF TWO VOLUMES — (Pages A1 to A265)

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PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	<u>PAGE</u>
Docket entries.....	A1
Order (Burke, D.J.) dated December 11, 1972 fixing time and manner of filing and allowing proofs of claim and of stock interests.....	A24
Proof of claim of Harry E. Jones and Aleck Goldberg, as custodian.....	A27
Trustee's objection to Jones-Goldberg claim.....	A31
Trustee's notice of motion to disallow Jones-Goldberg claim insofar as purportedly filed on behalf of a class, with supporting affidavit.....	A33
Proof of mailing of order fixing time and manner of filing and allowing proofs of . claim, etc.....	A41
Memorandum-Order (Burke, D.J.) dated July 24, 1975 disallowing so much of Jones-Goldberg claim as purports to be filed on behalf of a class.....	A44
Trustee's answers to first set of interrogatories of Chemical Bank. [Extract, through answer to Interrogatory #1.].....	A47
Order (Hayes, B.J.) dated April 15, 1975, fixing hearing and directing service with regard to Trustee's application for approval of settlement with banks, with attached Trustee's petition and agreement between Trustee and banks.....	A52
Transcript of May 10, 1976 hearing before Hayes, B.J. of Trustee's application to settle objections to banks' claims.....	A61
Findings of fact and recommendation (Hayes, B.J.) with regard to Trustee's settlement with banks.....	A108

PAGE

Order (Burke, D.J.) dated May 1976 fixing hearing and directing service with regard to Trustee's application to confirm findings and recommendation of Hayes, B.J. concerning settlement with banks, with attached Trustee's petition and affidavit of Thomas W. Petrillo.....	A115
Transcript of June 28, 1976 hearing before Burke, D.J. of Trustee's application to confirm findings and recommendation of Hayes, B.J. with regard to settlement with banks.....	A125
Order (Burke, D.J.) dated June 29, 1976 confirming report of Hayes, B.J. and approving settlement with banks.....	A142
Order (Burke, D.J.) dated June 29, 1976 directing substantive consolidation.....	A146
Notice of hearing to be held on Trustee's application for determination of insolvency and whether stockholders shall be included as general creditors for distribution participation purposes, with attached order (Burke, D.J.) dated April 28, 1977 fixing date for hearings, application of Trustee, and report of Trustee pursuant to Bankruptcy Act § 167(1).....	A149
Statement under Bankruptcy Rule 10-211 of I. Walton Bader, attorney for (Mrs.) D. Windsor Dixon.....	A185
Notice of appearance of Bader & Bader, attorneys for (Mrs.) D. Windsor Dixon.....	A187
Estimated Liquidation Distributions. [Trustee's Exhibit 3 at June 13, 1977 hearing.].....	A188
Statement under Bankruptcy Rule 10-211(a) of Robert B. Block, attorney for Gregory Jezarian, Geraldine Jezarian and Lonetown Company.....	A189

PAGE

Transcript of June 13, 1977 hearing before Burke, D.J. of Trustee's application for determination of insolvency and whether stockholders shall be included as general creditors for distribution participation purposes.....	A191
Order (Burke, D.J.) dated June 13, 1977 finding debtor insolvent.....	A266
Affidavit of Robert B. Block submitted in behalf of Gregory Jezarian, Geraldine Jezarian, Lonetown Company, Harry E. Jones and Aleck Goldberg as custodian, with following attachments:.....	A269
Exh. 1 - Securities and Exchange Commission Litigation Release No. 6960 dated July 2, 1975.....	A274
Exh. 2 - Extract from Accounting Series Re- lease #173 dated July 2, 1975 of the Securities and Exchange Commission, pp. 62,475 to 62,491.....	A280
Exh. 3 - Indictment in United States of America v. David Stirling, Jr., et al., U.S.D.C.S.D.N.Y., 76 Crim. 0685.....	A298
Exh. 4 - Bill of Particulars in United States v. David Stirling, Jr., et al., U.S.D.C.S.D.N.Y., 76 Crim. 0685.....	A312
Exh. 5 - Original Complaint in Jezarian v. Csapo, U.S.D.C.S.D.N.Y., 72 Civ. 1671 (DBB).....	A334
Exh. 6 - Stirling Homex Prospectus, dated July 29, 1971.....	A345
Exh. 7 - ¶¶17, 18 extracted from affidavit of Richard S. Simmons, sworn to March 29, 1976.....	A388
Exh. 8 - Memorandum dated May 21, 1971 of P. Prima of Chemical Bank addressed to M. Ivanetic and others of Chemical Bank.....	A391

	<u>PAGE</u>
Exh. 9 - Memorandum dated October 13, 1971 from P. Prima of Chemical Bank to M. Ivanetic and W. R. Hazen of Chemical Bank.....	A396
Exh.10 - Letter dated April 3, 1972 from Chemical Bank to Paul Kuveke.....	A399
Affidavit of Henry Lewis Goodman submitted in behalf of Chemical Bank, with following attachments:.....	A401
Exh. 1 - Order fixing time and manner of filing and allowing proofs of claim and stock interests. [Reproduced at A24, <u>supra</u> .]	
Exh. 2 - Order fixing hearing and directing service with regard to Trustee's application for approval of settlement with banks, with attached Trustee's petition and agreement with banks. [Reproduced at A52, <u>supra</u> .]	
Exh. 3 - Findings of fact and recommendation of Hayes, B.J. with regard to Trustee's settlement with banks. [Reproduced at A108, <u>supra</u> .]	
Exh. 4 - Order fixing hearing and directing service with regard to Trustee's application to confirm findings and recommendation concerning settlement with banks, with attachments. [Reproduced at A115, <u>supra</u> .]	
Exh. 5 - Order confirming report of Bankruptcy Judge and approving settlement with banks. [Reproduced at A142, <u>supra</u> .]	
Exh. 6 - Order directing substantive consolidation. [Reproduced at A146, <u>supra</u> .]	
Exh. 7 - Letter dated December 21, 1976 from Robert B. Block to Frank J. Raichle, Reorganization Trustee.....	A412

Exh. 8 - Statement under Bankruptcy Rule 10-211(a) of attorney for Jezarians et ano. [Reproduced at A189, <u>supra</u> .]	
Exh. 9 - Consolidated amended and supple- mental complaint in Jezarian v. Csapo, U.S.D.C.S.D.N.Y., 72 Civ. 1671 (DBB).....	A417
Exh.10 - Statement under Bankruptcy Rule 10-211 of attorney for (Mrs.) D. Windsor Dixon. [Reproduced at A185, <u>supra</u> .]	
Exh.11 - Notice of appearance of Bader and Bader. [Reproduced at A187, <u>supra</u> .]	
Exh.12 - Form of summons and notice of trial with attached form of complaint in adversary proceedings. [Omitted from Appendix.]	
Exh.13 - Estimated Liquidation Distributions. [Reproduced at A188, <u>supra</u> .]	
Order (Burke, D.J.) dated July 27, 1977 subordinating claims of defrauded stock- holders to claims of conventional general creditors.....	A440
Notice of appeal of Mrs. D. Windsor Dixon.....	A447
Notice of appeal of Gregory Jezarian, Geraldine Jezarian, Lonetown Company, Harry E. Jones and Aleck Goldberg as custodian.....	A449

NAME OF BANKRUPT/DEBTOR STIRLING HOMEX CORPORATION				DIST. NO. 209		DIV NO.		DOCKET NO. BK-72-1399^A		1	
Last First Middle				CHAPTER OR SECTION X		CHECK IF		☒ Voluntary		☐ Involuntary	
				DATE PETITION FILED 7-12-72		☒		☐ Fee paid in installments		☒ Corporation	
				DATE CLOSED		OCCUPATION		☐ Farmer		☐ Employee	
				DIS-CHARGE		(Check one)		☐ Granted		☐ Professional	
				☒ Denied		☐ Waived or not applied for		☐ Other (Non-business)		☐ Merchant	
ADDRESS OF BANKRUPT/DEBTOR (Number and Street)				DATE DISCHARGED		☒		☐ Manufacturer		☐ Other (Business)	
1150 East River Rd.				PETITION DISMISSED? ☐ YES		DATE DISMISSED		CHAPTER UNDER WHICH CASE WAS PENDING WHEN DISMISSED			
CITY Avon		ZONE		COUNTY Livingston		STATE NY		NAME OF JUDGE Harold P. Burke			
								NAME OF REFEREE			
NO ASSET CASES ONLY CLAIMS AS SCHEDULED ☒				TOTAL \$		PRIORITY \$		SECURED \$		UNSECURED \$	
ATTORNEY FOR BANKRUPT OR DEBTOR		NAMES AND ADDRESSES Hurst, David & King / Levin & Weintraub 130 Powers Bldg., Rochester / 225 Broadway, NY 10007									
ATTORNEY FOR PETITIONING CREDITORS											
RECEIVER											
ATTORNEY FOR RECEIVER											
TRUSTEE		Frank G. Raichle 852-7587 10 Lafayette Sq. Buffalo, NY 14203									
ATTORNEY FOR TRUSTEE		Jaeckle, Fleischmann & Mugal / Johnson, Reif & Mullan 700 Liberty Bank Bldg. / 47 So. Fitzhugh St. Buffalo, NY 14202 / Rochester, NY 14614									
CHANGES OF PRINCIPALS											
DATE		PROCEEDINGS									
7-12-72		Filed Order Approving Petition.-Burke,DJ									
7-13-72		Filed Order Appointing Trustee, Frank G. Raichle. 9/11/72 set as date for hearing of objections to the retention of the Trustee.-Burke,DJ									
7-17-72		Filed Bond of Trustee - \$100,000.									
7-20-72		Filed application for employment of accountants and affidavit for Trustee.									
" "		Filed Order approving employment of accountants.-Burke,DJ									
7-25-72		Filed Petition and affidavit of trustee to employ Attorney.									
" "		Filed Order authorizing appointment of attorneys for Trustee, Jaeckle, Fleischmann & Mugal.-Burke,DJ									
7-29-72		Filed application to issue certificates of indebtedness.									
" "		Filed Order fixing hearing on application to issue									

- 31-72 Filed Notice of Appearance and Demand.
- 29-72 certificates of indebtedness. Hearing date 8-2-72.-Burke,DJ
- 3-72 Filed Order authorizing issuance of certificates of indebtedness and affidavit of service by mail.-Burke,DJ
- " Filed affidavit of publication
- 16-72 Filed Order amending the last paragraph of the order of 8-2-72 which authorized the Trustee to issue certificates of indebtedness.-Burke,DJ
- " Filed Order fixing hearing date of 8-23-72 on application of Trustee for authorization to sell all liens, etc. and on the application to sell debtors car.-Burke,DJ
- 15-72 Filed Monthly report of Business Operations
- 16-72 Filed application to sell personalty.
- " Filed application to sell automobile
- 24-72 Filed Order authorizing sales of certain personalty.-Burke,DJ
- Filed affidavit of service by mail.
- Filed Order authorizing sale of automobile.-Burke,DJ
- Filed affidavit of service by mail.
- 16-72 Filed Order fixing hearing on application to sell furniture, equipment, carpeting and audiovisual console, ret. 8-23-72.-Burke,DJ
- " Filed Order fixing hearing to sell debtor's car ret. 8-23-72.
- " Filed amended order of 8-2-72.-Burke,DJ
- Filed Petition to examine witness
- Filed Order directing that Trustee may examine witness.-Burke,DJ
- 6-72 Filed Savage Fagarty Companies' affidavit, notice of motion & motion for Order modifying Order approving petition and appointing Trustee. ret. 9-11-72.
- 11-72 Filed List of stockholders
- " Filed list of creditors
- " Filed affidavit
- " Filed affidavit of service by mail
- " Filed affidavit of service by mail
- 15-72 Filed Monthly report of Business Operations for the Month of August, 1972.
- 22-72 Filed Application of Trustee and Order staying hearing and other proceedings before the New York State Tax Comm. ret.10-10-72
- 26-72 Filed petition to reclaim property by M&R Linoleum and Carpet Co., Inc.
- 25-72 Filed subpoenas to David Stirling, Jr., William G. Stirling and Jose Jiminez served on 9-20-72; Victor C. Pappas, Harper Sibley, returned unserved. Carl L. Wren served 9-18-72 and Frank Csapo served 9-20-72.
- 0-6-72 Filed 2 subpoenas for Harold M. Yanowitch served 9-22-72 and Edwin J. Schulz served on 9-26-72.
- 0-3-72 Filed motion for examination of witness ret. 10-10-72.
- 0-2-72 Filed application and Order for authorization to prosecute claim against the State of New York and to retain special counsel.
- 0-11-72 Filed Order extending time to file report as to executory contracts
- " Filed Order fixing hearing date of 10-24-72 re Tadeo Const. and Leasing Corp.
- " Filed Application for authority to sell property.
- " Filed Order fixing hearing re authority to sell property ret. 10/24/72.-Burke,DJ
- " Filed Order authorizing Trustee to make time deposits at interest.
- 16-72 Filed Monthly Report of Business Operations for the Month of September, 1972.
- 18-72 Filed Order to show cause and stay re Downing Homes, Inc.-Burke
- 0-24-72 Filed Order authorizing sale of certain property and inventory.
- " Filed reply affidavits for respondent, Downing Homes, Inc.
- " Filed transcript of proceedings before L. Robert Leisner on 4/27/72.

DATE	PROCEEDINGS
10-24-72	Filed Order authorizing sale of certain inventory to Taddeo Construction and Leasing Corp.,-Burke,DJ
" "	Filed Order authorizing sales of Property.-Burke,DJ
" "	Filed affidavit of mailing.
" "	Filed answer in opposition to application for stay of State Tax proceeding.
" "	Application to stay proceedings before N.Y. State Tax Commission, etc. -To be submitted in 2 weeks.
" "	Application by the Trustee to sell certain property-Granted
" "	Application to sell 62 dwelling units-Granted.
" "	Order to Show cause and stay. To be finally submitted 3 weeks from today.-Burke,DJ
10-31-72	Order to show cause why M. Thurston Little should not surrender possession of corporate property of the debtor, etc.,ret. 11/13/72.-Burke,DJ
11-6-72	List of Schedules and Stockholders received.
11-9-72	Filed Order enjoining N.Y. State Tax Comm. until final termination of the Bankruptcy.-Burke,DJ
11-13-72	Order to show cause why M. Thurston should not surrender certain property of debtor, etc. No Opposition. Submitted.
11-15-72	Schedules of Creditors have been mailed to the S.E.C. in New York and Washington & Secy. of Treas.
11-16-72	Filed Monthly Report of Business Operations for the Month of October, 1972.
11-22-72	Filed Order of Findings of Fact and Conclusions of Law. Burke,DJ
12-4-72	Filed affidavit and Order to Show Cause ret. 12/11/72 at 10:00 A.M. in Rochester.-Burke,DJ
12-11-72	Filed Trustee's answering affidavit
" "	Filed Order to show cause why order of 11-16-72 should not be resettled, etc. To be submitted two weeks from today. and Order
12-12-72	Filed Application/to extend time to file report as to executory contracts.-Burke,DJ
" "	Filed Application and Order fixing time and manner of filing and allowing proofs of claim and of stock interests.-Burke,DJ
12-18-72	Filed Monthly Report of Business Operations for the Month of November, 1972.
12-29-72	Filed Order that an evidentiary hearing will be held in Rochester on January 8, 1973, at 2:00 P.M. where both parties may produce evidence bearing on the merits of the controversy.-Burke,DJ (Order dated 12/27/72)
<u>1973</u>	
1-8-73	Filed Order fixing hearing for 1/22/73 upon Trustee's application to sell certain property.-Burke,DJ
" "	Filed Order fixing hearing for 1/22/73 upon Trustee's application to sell rights in property re Grandview Proj. to Hardner-Doyle Company.-Burke,DJ
" "	Filed Application by Trustee to sell property.
continued .	

DATE	PROCEEDINGS
1-8-73	Filed Petition for leave to assign contract rights and to sell Real Estate and Personal property, free and clear of all liens and encumbrances.
" "	Evidentiary Hearing. - re Downing Homes, Inc. - Central Trust Co. escrow. Adj. to
1-10-73	Filed Subpoena to produce to Edward A. Frank, served 1-5-73
1-11-73	Filed Order that the last day of the time within which the Trustee shall file his reports is extended from 1-12-73 to 3-12-73.-Burke, DJ
" "	Filed Application to extend time to file report as to Executory Contracts.
1-15-73	Filed claimant's M & R Linoleum & Carpet Co. notice of motion and Attorney's affidavit ret. 1-22-73. To be submitted 3/5/73
" "	Filed Monthly Report of Business Operations for the Month of December, 1972.
1-18-73	Filed Order that the Trustee has the burden of going forward with the proof at the evidentiary hearing.-Burke, DJ
1-22-73	Filed Answer to Application to reclaim property.
" "	Filed Affidavit of proof of service.
" "	" " " " " "
1-26-73	Filed Order that Central Trust Co. of Roch., NY pay over to Downing Homes, Inc. \$100,000.00 together with accrued interest thereon, and upon payment its liability between Central Tr. Co. and Stirling Homex shall terminate. Further Ordered that \$7,500.00 shall be paid to Frank G. Raichle by Downing Homes.-Burke, DJ
1-29-73	Filed Order authorizing sales of property.-Burke, DJ
" "	Filed Order authorizing sale of Realty and Personal property, and assignment of contract free and clear of encumbrances.-Burke, DJ
2-5-73	Filed Order Fixing Hearing on 2-12-73.-Burke, DJ
" "	Filed Trustee Application to sell certain inventory. -adj. to 2/26/73.
2-9-73	Received affidavit from F.S. D'Alessandro with respect to paragraph 7 in Judge Burke's Order dated 12/11/72 as to stockholders interest.
2-12-73	Filed Order to Show Cause why an order should not be made allowing Alan McCanne to commence a special proceeding in New York Supreme Court to confirm arbitrator's answering affidavit award-ret. 2/12/73. - To be submitted 2-26-73.
" "	Filed Trustee's answering affidavit.
2-14-73	Filed Affidavit in re to the Ownership of stock of Stirling Homex in the name of Leonie F. Barnes and four minor children.
" "	Filed Affidavit in re to the Ownership of stock of Stirling Homex in the name of Dorothy Miller.
" "	Filed Order fixing time of filing application for interim allowances and time of hearing thereon,-Burke, DJ
2-15-73	Hearing set for 4/23/73. Filed Monthly report of Business Operations for the Month of January, 1973.

continued

DATE	PROCEEDINGS
2-15-73	Filed Order that M. Thurston Little turn over to a representative of the Trustee, the personal property that is located in the former office of Stirling Homex Corp. in Corinth, Miss. by 3-1-73, further ordered that M. Thurston Little send all documents regarding the sale of certain debtor's land in Miss. by 3-1-73, and further ORDERED that Mr. Little send the Trustee a certified check for \$58,488.36 being in the proceeds of the sale of property in Miss.-Burke,DJ
2-16-73	Filed Order authorizing sale of certain inventory.-Burke,DJ
3-12-73	Filed in Roch., Application to extend time to file reports as to executory contracts.
" "	Filed in Roch., Order extending time to file report as to executory contracts of each of the debtor's with recommendations as to assumption or rejection thereof is extended from 3-12-73 to 4-27-73.-Burke,DJ dated 3-9-73
3-15-73	Filed Monthly Report of Business Operations for the Month of February, 1973.
4-13-73	Filed Order fixing hearing on April 23, 1973,-Burke,DJ
" "	Filed Application for authority to continue sale of items not needed in the operation of debtor's business.
4-16-73	Filed Monthly Report of Business Operations for the Month of March, 1973.
4-17-73	Filed Trustee's application to sell certain inventory. Granted.
" "	Filed Order fixing hearing on 4-23-73 for Trustee's authority to sell certain inventory.-Burke,DJ-Submitted.
4-20-73	Filed Statement of Attorneys for Creditors under Sec.210 received from Sidney Feldshuh, Esq. of New York, NY.
4-23-73	Filed in Roch., Objections to Claims by Chemical Bank, et al
" "	Filed Corrected Statement of 4-20-73. Should read: Statement of Attys. for Stockholders under Sec. 210.
" "	Filed in Roch., a sworn statement by Atty. for Trustee that he served copies of Trustee's application for authority to continue selling etc. to SEC, et al.
" "	Filed in Roch., a sworn statement by Atty. for Trustee that he served copies of Trustee's application for authority to sell modules to Kosoff-Palombi and the Order fixing hearing to SEC, et al.
" "	Filed in Roch., four affidavits of service.
4-24-73	Filed Order authorizing the Trustee to continue selling property that is not needed in the operation of debtor's business, etc.-Burke,DJ
" "	Filed Order authorizing the Trustee to sell certain inventory to Kosoff Palombi & Assoc., Inc.etc.-Burke,DJ
4-30-73	Filed Application and Order extending time to file report as to Executory Contracts. Extended from 4-27-73 to 5-29-73.-Burke,DJ
5-16-73	Filed in Roch., Monthly Report of Business Operations for the Month of April, 1973.
5-25-73	Filed Application and Order Extending time to file report as to Executory Contracts. Extended from 5-29-73 to 6-30-73.-Burke,DJ

continued

DATE	PROCEEDINGS
6-4-73	Filed Application of M. Thurston Little to Enforce Lien in response to the Order of this Court of 2/14/73.
6-25-73	Filed Order that Alan McCanne is authorized to commence a special proceedings against Stirling Homex in the Supreme Court, State of New York, etc.-Burke,DJ
" "	Filed Order that the Trustee pay S.D. Leidesdorf a total allowance of \$139,556.68 and the firm of Jaeckle, Fleischmann & Mugal \$40,000.00 for service rendered and \$5,272.23 for necessary disbursements in the handling of the reorganization proceedings a final allowance will be made at the conclusion of these proceedings.-Burke,DJ
6-29-73	Filed Order that a hearing will be held to determine Petitioner's claim in reclamation on 7-23-73.-Burke,DJ
7-13-73	Filed Application for authority to sell Fork Lift Truck and Order fixing Hearing ret. 7-23-73.-Burke,DJ
" "	Filed Monthly Report of Business Operations for the Month of June, 1973:
7-23-73	Filed in Roch., Order authorizing sale of AH 40 to William Thom & co., Inc.-Burke,DJ
" "	Hearing on application of Trustee to sell equipment for \$29,000. No Opposition.
" "	Hearing to determine claim of M & R Linoleum & Carpet Co. Trustee renews motion to have reclamation dismissed. Each side to submit proposed findings and conclusion one month from today.
8-15-73	Filed report of Executory Contracts.
" "	Filed Monthly Report of Business Operations for the Month of July, 1973.
9-10-73	Filed Motion for Order Subrogating United Brotherhood of Carpenters and Joiners of America, Assignee, to Original Claimant, Local Union 1106, ret.9-24-73.
9-12-73	Filed Notice of Motion for Leave to Foreclose and Application for Leave to Foreclose Mortgage re Kabeth Properties. (Graham & Eggleston) ret. 9/24/73.
9-13-73	Filed Application of the City of Akron, Ohio for Allowance of Compensation and Disbursement and Sequestration of Funds. Hearing date to be set.
9-20-73	Filed in Roch., Monthly Report of Business Operations for the Month of August, 1973.
" "	Filed in Roch., Application of Trustee to sell certain inventory (120 1971 Series Townhouse Units to Dalton L. Scovill)
" "	Filed in Roch., Order Fixing Hearing on application of Trustee to sell certain inventory for 9-24-73.-Henderson, DJ.
9-24-73	Filed in Roch., Order Authorizing sale of certain inventory (modular dwelling units) to Dalton L. Scovill for \$450,000.00-Burke,DJ
" "	Filed in Roch., Order Fixing Hearing on application of Trustee for Order enjoining further transfer of stock, etc. ret. 10-23-73.-Burke,DJ
9-24-73	Adj. to 11-26-73, appearances: Eugene Smolka for the Trustee
	continued

DOCKET NUMBER

DATE	PROCEEDINGS
9-24-73	Motion by United Brotherhood of Carpenters, etc. for Order of Subrogation. No opposition by the Trustee. Order to be submitted.
" "	Hearing on application of Trustee to sell certain inventory to Dalton L. Scovill. No opposition. Granted.
10-15-73	Filed in Roch., Monthly Report of Business Operations for the Month of September, 1973.
10-23-73	Hearing on application of Trustee for Order enjoining further transfer of stock. Removed from calendar, no appearances.
10-31-73	Filed Order Fixing Hearing on Trustee's application to employ Midland Research Corp. ret. 11/12/73.-Burke, DJ
11-7-73	Filed Order Fixing Hearing on Application to Reject Executory Employment Contracts ret. 11-26-73-Burke, DJ
" "	Filed Order Fixing Hearing on Application to Reject Executory Equipment Contracts, ret. 11-26-73.-Burke, DJ
11-9-73	Filed Order Fixing Hearing on Application to sell, etc. ret. 11-26-73.-Burke, DJ - GRANTED
11-12-73	Filed in Roch., Order Authorizing Employment of Appraisers Burke, DJ.
" "	Filed Affidavit of Service by Eugene Smolka
11-15-73	Filed in Roch., Monthly Report of Business Operations for the Month of October, 1973.
11-16-73	Filed Motion by Swindell-Dressler Co. for an order allowing Swindell-Dressler to file a claim. ret. 11-26-73
" "	Filed Petition of Swindell-Dressler Co.
11-19-73	Filed Trustee's answer to application to file late claim.
11-26-73	Filed in Roch., Stipulation with Rochester Telephone Corp. re application for authority to reject special facilities equipment contracts.-GRANTED
" "	Filed in Roch., Order Authorizing Sales of Property-Burke
" "	Motion by Swindell-Dressler Co. to file claim.
" "	Simultaneous briefs to be submitted one week from today.
12-10-73	Filed Order authorizing Trustee to reject Executory Employment Contracts.-Burke, DJ
" "	Filed in Roch., Order Authorizing Sale of Real Property. Burke, DJ (Kabeth Properties)
12-12-73	Filed Order Authorizing Rejection of Executory Equipment Contracts.-Burke, DJ
12-17-73	Filed Order allowing Swindell-Dressler Co. to file its claim no later than 1-10-74.-Burke, DJ
<u>1974</u>	
1-8-74	Filed Order extending time to file report as to Executory contracts from 6-30-73 to 7-31-73.-Burke, DJ
" "	Filed Order extending time to file report as to Executory contracts from 7-31-73 to 8-31-73.-Burke, DJ
1-15-74	Filed Monthly Report of Business Operations for the Month of December, 1973.
2-19-74	Filed Order Fixing hearing on Trustee's application for authority to bid at two foreclosure sales on property, Onondaga County, ret. 2-25-74.-Burke, DJ
2-25-74	No opposition. Granted.
3-1-74	Filed Order referring all objections to claims of

DATE	PROCEEDINGS
3-1-74	creditors to Austin J. Donovan.-Burke,DJ
3-4-74	Filed Application and Order Fixing Hearing for authority for Trustee to sell 100 two-bedroom housing units to W. Robert Sutherland. Hearing date set for 3-11-73.-Burke,DJ
" "	Filed application and Order fixing hearing date for Trustee to sell certain inventory. Hearing date set for 3-11-74.-Burke,DJ
3-11-74	Filed in Roch., Order authorizing sale of certain inventory to Holiday Lake, Inc. and Henry E. Wulster. Burke,DJ
" "	Filed in Roch., Order authorizing sale of certain inventory to W. Robert Sutherland.-Burke,DJ
" "	Hearing on application of Trustee for authority to sell, No opposition. Granted.
3-15-74	Filed in Roch., Monthly Report of Business Operations for the Month of February, 1974.
4-15-74	Filed Monthly Report of Business operations for the month of March, 1974.
4-18-74	Filed Objection to the allowance of the claim of Empire Pipeline Corp.
" "	Filed Objection to the allowance of the Claim of Route 57 & 31 Development Corp.
4-23-74	Filed Objection to the allowance of the claim of Harry E. Jones.
" "	Filed Notice of motion;for order disallowing so much of the Proof of Claim previously filed by Harry Jones, returnable 5/13/74. Adj. to 6/10/74 Adj. to 6/24/74
" "	Received Memorandum of Law in Support of Trustee's Motion to Disallow "Class Action" Proof of Claim.
4-24-74	Filed Notice of Hearing re the claims of Route 57 & 31 and Empire Pipeline Corp.
4-29-74	Filed in Rochester, Order allowing extension of time to file Proof of Claim for Bill Farr's Mobil Ser.-Burke,DJ
5-3-74	Filed Application and order fixing hearing date for authority for Trustee to sell certain parcels of land, date set for 5/13/74.-Burke,DJ No opposition. Granted
5-13-74	Filed in Rochester, Order Authorizing sale of Real Property.-Burke,DJ
5-15-74	Filed Order allowing J. Schulz to file a proof of wage claim after the time having been expired.-Burke,DJ
" "	Filed Monthly R ^E port of Business Operations for the Month of April, 1974.
5-23-74	Filed Order fixing hearing for authority for Trustee to' continuing selling.-Burke,DJ. Date set for 6/10/74.
6-10-74	Filed in Rochester, Order Authorizing Sales of Property. Burke,DJ
" "	Filed in Rochester, Affidavit of Service.
" "	Hearing on application of Trustee for authority to sell No opposition. Granted
6-26-74	Filed Order authorizing Trustee to compromise the controversy with the University of Pittsburgh, etc.-Burke,DJ.

CONTINUED

DATE	PROCEEDINGS
6-26-74	Filed order allowing the proof of claim submitted by Clover Leaf Paint and Varnish Corp. to be timely filed.-Burke,DJ
6-12-74	Filed in Rochester, Monthly report of Business Operations for the Month of May, 1974.
7-2-74	Filed application to extend time to file claim by George T. Stewart.
" "	Filed order allowing claim by George T. Stewart to be timely filed.-Burke,DJ
" "	Filed Findings Of Fact re M & R Linoleum and Carpet Co. Inc. - Conclusions of Law.-Burke,DJ
7-11-74	Filed Application by Trustee regarding hearings on objections to claims of creditors be referred to the Bankruptcy Judge.
" "	Filed Order referring objections of claims to Austin J. Donovan, Bankruptcy Judge.-Burke,DJ
7-12-74	Filed in Rochester, Monthly Report of Business Operations for the Month of June, 1974.
7-25-74	Filed Order allowing extension of time to file proof of claim by Frank Piraino, Inc.-Burke,DJ
8-28-74	Filed Motion by Trustee to amend Findings of Fact and Conclusions of Law re M & R Linoleum & Carpet Co. reclamation proceedings, ret. 9-9-74
9-9-74	Motion by Trustee for reargument and reconsideration of Findings of Fact & Conclusions of Law, Adj. to 9/23/74
9-15-74	Filed Monthly report of Business Operations for the Month of August, 1974.
9-23-74	Filed Order authorizing Bidding and Purchase on Foreclosure sale re John Glen Boulevard, Clay, NY.-Burke
" "	Filed order authorizing Trustee to continue selling in his discretion, etc.-Burke, DJ
" "	Hearing on Trustee's application for authority to continue selling property. No opposition. Granted.
" "	Hearing on Trustee's application for authority to bid at foreclosure sale. No opposition. Granted.
" "	Trustee's motion re M & R Linoleum & motion by M & R Linoleum for settlement of judgment. To be submitted two weeks from today.
9-12-74	Filed in Rochester, order fixing hearing on Trustee's application to bid at foreclosure sale, ret. 9/23/74
10-17-74	Filed Monthly Report of Business operations for the Month of September, 1974.
10-23-74	Filed Order fixing Hearing on Trustee's application to compromise the controversy with the Rochester Institute of Technology ret. 11/11/74.-Burke,DJ
10-21-74	Filed Motion by Rochester Telephone Corp. to enlarge time for filing its proof of claim ret. 11/11/74.
11-4-74	Filed Order authorizing Trustee to transfer monies in depositories designated by this court, etc., supersedes order dated 10/16/74 which was not filed with the Clerk of this Court.-Burke,DJ (application dated 10/11/74 annexed).

continued

DATE	PROCEEDINGS
12-9-74	Order to show cause to reclaim property - Otis elevator. Adj. to 1/13/75.
12-13-74	Filed Monthly Report of Business Operations for the Month of November, 1974.
12-19-74	Filed Application and order substituting Attorneys for Trustee. Ordered that the Trustee employ Johnson, Reif and Mullan.-Burke, DJ
<u>1975</u>	
1-15-75	Filed Monthly report of Business Operations for the Month of December, 1974.
1-13-75	Order to show cause to reclaim property re Otis Elevator. removed from calendar, no appearances.
2-19-75	Filed Monthly Report of Business Operations for the Month of January, 1975.
" "	Filed Order for examination of Peat, Marwick, Mitchell & Co., before Edward D. Hayes, Bankruptcy Judge.-Burke, DJ
2-26-75	Issued subpoena to produce, ret. 3/18/75 at 10:30 A.M. Rochester, NY Bankruptcy Court.
" "	Filed Order to Show Cause why Traveler's Indemnity Co. should not particularized its claim and be liquidated, etc ret. 3/24/75, and that any answer is to be filed on or before 3/17/75.-Burke, DJ
3-18-75	Filed Monthly Report of Business Operations for the Month of February, 1975.
3-18-75	Filed Answer to Petition and Cross-Petition for Determination of ownership of fund.
3-24-75	Order to Show Cause re Traveler's - Stipulated to.
3-26-75	Filed Answer to Cross-Petition of The Travelers Indemnity Co. by Trustee.
4-3-75	Filed Application by Trustee to sell real property to Mutual Tennis, Inc.
" "	Filed Order Fixing Hearing on Trustee's application to sell real property ret. 4/14/75.-Burke, DJ
4-14-75	Filed Affidavit of service re Order Fixing Hearing.
" "	Filed Monthly Report of Business Operations for the Month of March, 1975.
" "	Hearing on application of Trustee for authority to sell land in the Town of Clay. No opposition.
4-16-75	Filed Order authorizing Trustee to sell land situated in the Town of Clay.-Burke, DJ
4-21-75	Filed Marshals return on subpoena to produce. Elizabeth Barton, Secy. to Victor Earle served 3/3/75.
4-30-75	Filed Application by Trustee for authorization to sell miscellaneous property.
" "	Filed Trustee's application for authorization to sell specified property, re 41 trailers, etc.
" "	Filed Order fixing hearing on Trustee's application to sell miscellaneous property, ret. 5/12/75.-Burke, DJ
" "	Filed Order fixing hearing on Trustee's application to sell specified property, re 41 trailers, etc. ret. 5/12/75 Burke, DJ
5-6-75	Filed Trustee's objection to the allowance of the claim filed by the Chase Manhattan Bank.

DATE	PROCEEDINGS
5-6-75	Filed Trustee's objection to the allowance of the claim filed by Union Commerce Bank.
"	Filed Trustee's objection to the allowance of the claim filed by Union Planters National Bank of Memphis.
"	Filed Trustee's objection of the allowance of the claim filed by Chemical Bank.
"	Filed Trustee's objection to the allowance of the claim filed by First National State Bank of New Jersey.
"	Filed Trustee's objection to the allowance of the claim filed by Marine Midland Bank - Western.
"	Filed Trustee's objection to the allowance of the claim filed by Lincoln First Bank of Rochester.
"	Filed Trustee's objection to the allowance of the claim filed by Marine Midland Bank - Rochester.
"	Filed Trustee's objection to the allowance of the claim filed by The First National Bank of Chicago.
5-8-75	Filed Affidavit of service re Order Fixing Hearing on the sale of certain property.
"	Filed Affidavit of service re Order Fixing Hearing on the sale of certain trailers.
"	Filed Affidavits by Travelers Indemnity Co. Particularizing claim.
5-16-75	Filed Application to sell real property located in the Town of Clay, Onondaga County, New York.
"	Filed Order Fixing Hearing on Trustee's application to sell real property located in the Town of Clay, ret. 5/27/75.-Burke,DJ
"	Filed Order referring objections filed to the claims of Stirling Homex and all subsidiary corporations to Edward D. Hayes.-Burke,DJ
5-12-75	Hearing on application of Trustee to sell trailers.
"	Hearing on application of Trustee to sell property not needed. No opposition. Granted.
5-19-75	Filed Affidavit service on Order Fixing Hearing to sell debtor's property.
"	Filed Monthly Report of Business Operations for the Month of April, 1975.
"	Filed Order authorizing Trustee to continue selling property not needed in the operation of debtor's business etc.-Burke,DJ
"	Filed Order authorizing Trustee to sell 41 trailers etc. to Warren M. Atkinson etc.-Burke,DJ
"	Filed Order directing the Travelers Indemnity Co. to particularize their Cross-Petition for Determination of Ownership of Fund by 5/19/75.-Burke,DJ
"	Filed Order directing particularization of claim of the Traveler's Indemnity Co., and that 5/19/75 is fixed as the last day which the liquidated portion of said claim shall be provided etc.-Burke,DJ
5-27-75	Hearing on application of Trustee for authority to sell land in the Town of Clay. No opposition. Granted.
5-29-75	Filed Order Authorizing sale of real property in the Town of Clay to Edmiston Properties, Inc.-Burke,DJ

DATE	PROCEEDINGS
6-6-75	Filed Affidavit of mailing of Order fixing time and manner of filing and allowing proofs of claim and of Stock interest dated 12/11/72.
6-13-75	Filed Monthly Report of Business Operations for the Month of May, 1975.
6-17-75	Filed Order to Show Cause to consolidate with: BK-72-1464, BK-72-1496, BK-72-1497, BK-72-1498 & BK-72-1499, returnable 7/14/75, and that any answer is to be filed on or before 7/7/75.-Burke,DJ
6-19-75	Filed Conclusions of Law & Order on Hearing on objections to claim of Route 57 and 31 Development Corp.-Burke,DJ
6-23-75	Filed Affidavit of service by mail on Order to Show Cause to consolidate.
6-24-75	Filed in Rochester, Application of Securities and Exchange Comm. for clarification or, in the alternative, for modification of restraining order.
" "	Filed Decision and Order setting date for hearing on Application of Securities & Exchange Comm. date set for July 1, 1975.-Burke,DJ
6-26-75	Filed Stipulation and ORDER that copies of documents relating to Peat, Marwick & Mitchell & Co. shall be sealed against disclosure etc.-Burke, DJ
7-1-75	Filed Order modifying restraining order dated 7/13/72 to permit the S.E.C. to file a complaint, etc.-Burke,DJ
6-30-75	Filed Answer by The First National Bank of New Jersey to Trustee's petition, verified 6/13/75.
7-10-75	Filed Answer by The First National Bank of Chicago to Trustee's petition, verified 6/13/75.
7-14-75	Adj. to 7/28/75
7-16-75	Filed Monthly Report of Business Operations for the Month of June, 1975.
7-21-75	Filed Affidavit by O'Hara, O'Hara & Vars, Attys. for Clay Land Corp. in opposition to petition to consolidate.
7-25-75	Filed/Order disallowing so much of the proof of claim of Harry E. Jones & Alec Goldberg.-Burke,DJ
7-28-75	Order to show cause for consolidation, etc. Date for hearing in Sept. to be set.
8-11-75	Filed answer for the First National State Bank of New Jersey to Trustee's petition for substantive consolidation
8-12-75	Filed report of operations of business for July 1975.
8-15-75	Filed Order dismissing objections to the allowance of the proof of claims filed May 6, 1975.-Hayes
8-18-75	Filed Trustee's interrogatories to Marine Midland Bank-Western - Buffalo.
" "	Filed Trustee's interrogatories to Union Planters National Bank of Memphis.
" "	Filed Trustee's interrogatories to Union Commerce Bank.
" "	Filed Trustee's interrogatories to First National Bank of New Jersey.
" "	Filed Trustee's interrogatories to Chemical Bank.
" "	Filed Trustee's interrogatories to Lincoln First Bank of Rochester.
" "	Filed Trustee's interrogatories to Marine Midland Bank-Rochester.

DATE	PROCEEDINGS
8-18-75	Filed Trustee's interrogatories to Chase Manhattan Bank, N.A.
"	Filed Trustee's interrogatories to First National Bank of Chicago.
"	Filed Trustee's notice to produce documents to Marine Midland Bank-Western - Buffalo.
"	Filed Trustee's notice to produce documents to Union Planters National Bank of Memphis.
"	Filed Trustee's notice to produce documents to Union Commerce Bank.
"	Filed Trustee's notice to produce documents to First National State Bank of New Jersey.
"	Filed Trustee's notice to produce documents to Chemical Bank.
"	Filed Trustee's notice to produce documents to Lincoln First Bank of Rochester.
"	Filed Trustee's notice to produce documents to Marine Midland Bank-Rochester.
"	Filed Trustee's notice to produce documents to Chase Manhattan Bank, N.A.
"	Filed Trustee's notice to produce documents to First National Bank of Chicago.
9-2-75	Filed in Rochester, Trustee's petition for substantive consolidation-answers to first set of interrogatories.
"	Filed in Rochester, Trustee's petition for substantive consolidation-answers to second set of interrogatories.
9-16-75	Filed Monthly Report of Business Operations for the Month of August 1975
10-3-75	Filed Order authorizing Trustee to pay Johnson, Reif and Mullan disbursements made in connection with service they rendered.-Burke,DJ
10-15-75	Filed Monthly Report of Business Operations for the Month of September, 1975.
1-12-75	Filed Monthly report of Business operations for the month of October, 1975.
11-14-75	Filed Motion by Attys. for Trustee to confirm the report of the Bankruptcy Judge withdrawing claim by David) as Assignees of Stirling, Jr. and William G. Sterling. ret. 12/8/75.) Hackett Prop., Ind.,
"	Filed Motion by Attys. for Trustee to confirm the report of the Bankruptcy Judge withdrawing the claim by William G. Stirling. ret. 12/8/75
"	Filed Motion by Attys. for Trustee to confirm the report of the Bankruptcy Judge withdrawing the claim by David Stirling, Jr. ret. 12/8/75.
"	Filed Motion by Attys. for Trustee to confirm the report of the Bankruptcy Judge withdrawing the claim by Harold Yanowitch. ret. 12/8/75.
12-4-75	Filed Application for Settlement of Controversy re W.H. Tatum Sr. and M. Thurston Little.
"	Filed Order Fixing Hearing on Trustee's application for Authorization to compromise his controversies, etc. ret. 12/22/75.-Burke,DJ
	Continued

DATE	PROCEEDINGS
<u>1975</u>	
12-8-75	Motions by Trustee to confirm Findings of Fact and Recommendations. No opposition. Granted.
12-15-75	Filed Monthly Report of Business Operations for the Month of November, 1975.
12-16-75	Filed Application by Trustee for authorization to sell miscellaneous property.
" "	Filed Order Fixing Hearing on Trustee's application to continue selling miscellaneous property, ret. 12/22/75.-Burke,DJ
" "	Filed Affidavit of mailing re Order Fixing Hearing and application of Trustee to compromise his controversies with W.H. Tatum, Sr., etc.
12-18-75	Filed Order authorizing withdrawal of claim by William G. Stirling with prejudice.-Burke,DJ
" "	Filed Order authorizing withdrawal of claim by David Stirling, Jr., with prejudice.-Burke,DJ
" "	Filed Order authorizing withdrawal of claim by David Stirling, Jr. and William G. Stirling as Assignees of Hackett Properties, Inc. with prejudice.-Burke,DJ
" "	Filed Order authorizing withdrawal of claim by Harold M. Yanowitch with prejudice.-Burke,DJ
12-22-75	Hearing on application of Trustee to compromise controversies with Tatum and Little, etc.
	Hearing on application of Trustee to continue selling property. No objections. Granted.
12-24-75	Filed Statement in Support of Proposed Settlement by W.H. Tatum, Sr. and M. Thurston Little.
" "	Filed Withdrawal of Application to enforce Lien by M. Thurston Little.
" "	Filed Affidavit of Mailing of Order Fixing Hearing filed 12/16/75.
" "	Filed Order authorizing compromise of controversy with W.H. Tatum, Sr. and M. Thurston Little.-Burke,DJ
" "	Filed Order authorizing Trustee to continue selling property.-Burke,DJ
<u>1976</u>	
1-6-76	Order authorizing Trustee to pay Johnson, Reif and Mullan the sum of \$1,255.89 being expenses of administration. Burke,DJ
1-15-76	Filed Monthly Report of Business Operations for the Month of December, 1975.
2-12-76	Filed Application for allowance for services rendered by Allan D. Moore and George D. Bowles.
2-18-76	Filed Monthly Report of Business Operations for the Month of January, 1976.
2-24-76	Filed Order authorizing Trustee to pay Johnson, Reif and Mullan the sum of \$631.32 being expenses of administration.-Burke,DJ
3-8-76	Filed Order fixing hearing on trustee's application for authority to sell 150 1971 Townhouse units, etc. ret. 3/22/76.-Burke,DJ
" "	Filed Application by Trustee to sell 150 1971 townhouse units.

DATE	PROCEEDINGS
3-11-76	Filed affidavit of service of order fixing hearing.
3-12-76	Filed Monthly Report of Business Operations for the Month of February, 1976.
3-17-76	Filed Petition, Order & BOND designating Marine Midland Bank-Western a depository for the funds of the Trustee in the amount of (\$12,500,000).-Burke,DJ
3-19-76	Filed Petition for Final Allowances to Former Attys. for Trustee.(original filed in Rochester)
" "	Filed Computer records of services performed by Jaeckle, Fleischmann & Mugel on a Chronological basis. (original filed in Rochester)
3-22-76	Hearing on application of Trustee to sell property. No opposition. Granted.
3-24-76	Filed Order authorizing Trustee to sell 150, 1971 Series Townhouse Units, etc.-Burke,DJ
3-30-76	Filed Petition by Trustee for an order directing the State of New York through its Dept. of Taxation & Finance, etc. to refund all sums in violation of the previous Court order dated 11/8/72 & 7/12/72.
" "	Filed Order fixing hearing on Trustee's application for refund of monies, etc. ret. 4/12/76.Burke,DJ
3-31-76	Filed Affidavit of service by mail re Order Fixing Hearing on Trustee's application for refund of monies.
4-12-76	Filed Monthly Report of Business operations for the Month of March, 1976.
4-12-76	Hearing on petition of Trustee to return funds, Adj. to 4/26/76.
4-21-76	Filed Order authorizing Trustee to pay Johnson, Reif & Mullan the sum of \$551.11 being expenses of administration.-Burke,DJ
4-26-76	Hearing on trustee's application for refund of monies from N.Y. State Dept. of Taxation. To be submitted for decision May 10, 1976.
5-6-76	Filed Affidavit of service on Trustee supplemental petition for return of monies from N.Y. State Dept. of Taxation.
5-12-76	Filed Monthly report of Business Operations for the Month of April, 1976.
5-24-76	Filed Order fixing hearing upon Trustee's application to confirm Findings and Recommendations filed by the Bankruptcy Judge on 5/14/76 re Stirling & U.S.Shelter; Order fixing rehearing upon trustee's application to consolidate with U.S. Shelter, et al returnable 6/14/76.-Burke,DJ
6-14-76	Filed Monthly Report of Business Operations for the Month of May 1976.
6-30-76	Filed order confirming report of bankruptcy Judge, Burke, D.J.
6-30-76	Filed order approving additional bond. BURKE, D.J.
6-30-76	Filed order directing substantive consolidation, BURKE, D.J.
6-28-76	Filed consent of Clay Land Corp., to the entry of an order declaring the assets & liabilities to be that of Stirling Homex Corp., etc.

continued

DATE	PROCEEDINGS
1976	
6-28-76	Hearing on application of trustee to confirm findings and recommendations, etc. Rehearing on application of trustee to consolidate, etc. No objections to findings and recommendations. Approved. No objections to substantive consolidation. Approved. Order to be submitted.
7-16-76	Filed Monthly Report of Business operations for the Month of June, 1976.
" "	Filed Decision and Order that the refund of \$316,958.02 will be held by the State of New York until further determination of the validity of the claim for sales and use taxes.-Burke,DJ
7-19-76	Filed Trustee's application for authorization to compromise controversies with the Worcester Housing Authority.
" "	Filed Order Fixing Hearing on Trustee's application re Worcester Housing Authority ret. 7/26/76.-Burke,DJ
7-20-76	Filed Affidavit of mailing re Order fixing hearing.
7-23-76	Filed Order authorizing Trustee to pay Johnson, Reif & Mullan the sum of \$609.28 being the expenses of administration.-Burke,DJ
7-26-76	Hearing on Trustee's application for authorization to compromise his controversies with the Worcester Housing Authority. No opposition. Order to be submitted.
7-29-76	Filed Order Authorizing compromise of controversy with Worcester Housing Auth., etc. -Burke, DJ
7-30-76	Filed Order authorizing Harold Kammet to file a claim against Stirling Homex and such claim be timely filed.-Burke,DJ
" "	Filed Amended Order approving reduction of Bond dated 6/29/76.-Burke,DJ
8-16-76	Filed Monthly report of Business operations for the Month of July, 1976.
9-9-76	Filed Order authorizing Trustee to pay Johnson, Reif & Mullan the sum of \$928.83 for expenses of administration-Burke,DJ
" "	Filed Order authorizing objections to claims be heard & determined by Edward D. Hayes, Bankruptcy Judge and that notice of such hearing shall be directed in the form previously ordered by this Court.-Burke,DJ
9-14-76	Filed Monthly report of Business operations for the Month of August, 1976.
10-14-76	Filed Monthly report of Business operations for the Month of September, 1976.

DATE	PROCEEDINGS
1976	
6-28-76	Hearing on application of trustee to confirm findings and recommendations, etc. Rehearing on application of trustee to consolidate, etc. No objections to findings and recommendations. Approved. No objections to substantive consolidation. Approved. Order to be submitted.
7-16-76	Filed Monthly Report of Business operations for the Month of June, 1976.
" "	Filed Decision and Order that the refund of \$316,958.02 will be held by the State of New York until further determination of the validity of the claim for sales and use taxes.-Burke,DJ
7-19-76	Filed Trustee's application for authorization to compromise controversies with the Worcester Housing Authority.
" "	Filed Order Fixing Hearing on Trustee's application re Worcester Housing Authority ret. 7/26/76.-Burke,DJ
7-20-76	Filed Affidavit of mailing re Order fixing hearing.
7-23-76	Filed Order authorizing Trustee to pay Johnson, Reif & Mullan the sum of \$609.28 being the expenses of administration.-Burke,DJ
7-26-76	Hearing on Trustee's application for authorization to compromise his controversies with the Worcester Housing Authority. No opposition. Order to be submitted.
7-29-76	Filed Order Authorizing compromise of controversy with Worcester Housing Auth., etc. -Burke, DJ
7-30-76	Filed Order authorizing Harold Kammet to file a claim against Stirling Homex and such claim be timely filed.-Burke,DJ
" "	Filed Amended Order approving reduction of Bond dated 6/29/76.-Burke,DJ
8-16-76	Filed Monthly report of Business operations for the Month of July, 1976.
9-9-76	Filed Order authorizing Trustee to pay Johnson, Reif & Mullan the sum of \$928.83 for expenses of administration-Burke,DJ
" "	Filed Order authorizing objections to claims be heard & determined by Edward D. Hayes, Bankruptcy Judge and that notice of such hearing shall be directed in the form previously ordered by this Court.-Burke,DJ
9-14-76	Filed Monthly report of Business operations for the Month of August, 1976.
10-14-76	Filed Monthly report of Business operations for the Month of September, 1976.
11-12-76	Filed Application & ORDER fixing hearing for authorization to compromise Trustee's controversies with Empire Pipeline, Corp., ret. 12/13/76.
11-15-76	Filed Monthly Report of Business operations for the Month of October, 1976.
11-15-76	Filed Affidavit of service by mail re application & order fixing hearing - Empire Pipeline.

DATE	PROCEEDINGS
11-18-76	Filed Application & ORDER fixing hearing for final allowance of compensation & reimbursement of expenses to Jaeckle, Fleischmann & Mugel, returnable 12/13/76-Burke, DJ.
11-23-76	Filed Affidavit of service by mail re Claim of Afcon Construction Co., Inc.
11-24-76	Filed Affidavit of service by mail re Order fixing hearing for final allowances.
12-1-76	Filed Order authorizing Trustee to pay Johnson, Reif & Mullan \$877.70 for expenses of administration.-Burke, DJ
12-3-76	Filed Petition by Trustee to institute proceedings against David Stirling, Jr.; William G. Stirling; Harold M. Yanowitch; Edwin J. Schulz; Frank Csapo and Charles W. Marshall.
" "	Filed Order authorizing Trustee to institute proceedings against certain officers of Stirling Homex.-Burke, DJ
" "	Filed Affidavit of service by mail re Order fixing hearing for final allowances.
" "	Filed Affidavit of service by mail re Order fixing hearing for final allowances.
" "	Filed Affidavit of service by mail re Order fixing hearing for final allowances.
12-13-76	Hearing on Trustee's application to compromise controversies with Empire Pipeline Corp., etc. off the calendar. Hearing on Trustee's application for attorneys fees. submitted.
12-22-76	Filed Monthly report of Business operations for the month of November, 1976.
1977 1-3-77	Filed Decision ordering the Trustee to pay Jaeckle, Fleischmann & Mugel the sum of \$150,000.00 for services rendered, and \$9,181.72 for unreimbursed disbursements.-Burke, DJ
1-13-77	Filed Monthly report of Business Operations for the Month of December, 1976.
1-31-77	Filed Order amending Court order dated 2/27/74 (filed 3/1/74) referring all claims to the Bankruptcy judge etc, except those claims already confirmed by this Court, etc. and further excepting the claim of the State of Ohio and the State of New York.-Burke, DJ
2-14-77	Filed Order authorizing the Trustee to pay Johnson, Reif and Mullan the sum of \$808.79 being expenses of administration.-Burke, DJ
2-15-77	Filed Monthly report of Business operations for the Month of January, 1977.
2-22-77	Filed Affidavit of service by mail re claims of: James E. Hefner; Thomas Santa Lucia; Wilbur P. Trammell; Wilbur P. Trammell; Thomas Santa Lucia; James E. Hefner; Kevin C. Bridge; Pedro Santiago; William J. Pautienus; John Rottler; Ronald Garwood; James A. Vann; and David Palomera. <i>Don Rochester</i>
	CONTINUED

DATE	PROCEEDINGS
<u>1977</u>	
2-24-77	Filed petition for interim allowance to Trustee's Counsel.
" "	Filed Application by Trustee for hearing date on petition for interim allowance.
" "	Filed Order fixing hearing on Trustee's application seeking an interim allowance for services rendered by Johnson, Reif & Mullan returnable 3/28/77-Burke, DJ
2-25-77	Filed Application by Trustee to sell debtor's property.
" "	Filed Order fixing Hearing on Trustee's application to sell debtor's property not needed in the operations of Business returnable 3/14/77.-Burke, DJ
3-1-77	Filed Affidavit of Service by mail re order fixing hearing filed 2/25/77. - On Rochester
" "	Filed Affidavit of service by mail re Entry of order and of hearing on David Palomera. - On Rochester
3-8-77	Filed Motion to confirm report of Bankruptcy Judge returnable 4/11/77.
3-10-77	Filed Monthly Report of Business Operations for the Month of February, 1977.
3-14-77	Hearing on Trustee's application for authority to sell debtor's property. No opposition. Order to be submitted.
3-17-77	Filed Order authorizing Trustee to sell property from Time to time, etc.-Burke, DJ
3-25-77	Filed affidavit of service by mail on Order fixing hearing filed February 24, 1977. - On Rochester
" "	Filed Order authorizing Trustee to pay the sum of \$984.28 to Johnson, Reif & Mullan being expenses of administration.-Burke, DJ
3-28-77	Hearing on Trustee's application for interim allowance for services rendered by Johnson, Reif & Mullan. Submitted. Johnson, Reif & Mullan informed the Court that it was authorized to say on behalf of the S.E.C. that there was no objection to the application.
4-8-77	Filed Decision and Order authorizing the Trustee to pay Johnson, Reif & Mullan the sum of \$75,000.00 representing an interim allowance for services rendered.-Burke, DJ
4-11-77	Motion by Trustee to confirm report of Bankruptcy Judge. Consented to. Order to be submitted.
4-15-77	Filed Monthly report of Business operations for the Month of March, 1977.
4-18-77	Filed in Rochester, Report of Trustee. 67 pages - 132.00
4-20-77	Filed Order confirming and adopting the report of the Bankruptcy Judge dated 2/22/77 and the claim filed by the State of Ohio in the amount of \$1,166,062.05 is disallowed.-Burke, DJ
4-29-77	Filed ORDER fixing hearing date for determination that the Debtor be adjudicated insolvent, hearing for submission for inclusion in the plan, determination of proof of claims to be included as general creditors, ret. 6/13/77 and ORDERED that the Trustee submit a Plan of reorganization by July 20, 1977-Burke, DJ

DATE	PROCEEDINGS
5-10-77	Filed Monthly report of Business operations for the Month of April, 1977.
5-20-77	Filed Order directing and authorizing Trustee to file with the Secretaries of State, Certificates of Merger reflecting the substantive consolidation of U.S. Shelter Corp., et al, into Stirling Homex Corp.-Burke,DJ
6-1-77	Filed Affidavits of service by mail & publication of Order dated April 28, 1977.
6-6-77	Filed Objection by the Travelers Indemnity Co. that each of the shareholders who filed a proof of claim should not be treated as General, unsecured creditors, etc.
6-10-77	Filed Order referring the objection to the administrative claim filed by Moore & Bowles to Edward D. Hayes,-Burke, DJ
6-13-77	Filed Monthly report of Business operations for the Month of May, 1977.
6-13-77	Filed in Rochester, Notice of appearance of Mrs. D. Windsor Dixon in her own behalf and in behalf of the class of stockholders.
" "	Filed in Rochester, Affidavit of A. Robert Pietrzak.
" "	Filed in Rochester, Statement under Bankruptcy Rule 10-211 re Mrs. D. Windsor Dixon.
" "	Filed in Rochester, Attorney statement under Bankruptcy Rule 10-211(a) re Gregory Jezarian, Geraldine Jezarian and Lonetown Co.
6-13-77	See below for return of motion, etc.
6-6-77	Filed in Rochester, Telegram from Bader & Bader to Judge Burke objecting to Trustee's request to strike claims of stockholders, in behalf of Mrs. D. Windsor Dixon.
6-15-77	Filed motion to confirm the Findings and Recommendations set forth in the Memorandum and Decision of Hon. Edward D. Hayes with respect to the proof of claim filed by the State of New York returnable 6/27/77.
6-13-77	Hearing on Trustee's application for determination that consolidated debtor be adjudicated insolvent, etc. The Court declares the corporation insolvent. Hearing on Trustee's application for determination of classification of stockholders. To be submitted June 22, 1977.
6-23-77	Filed order authorizing trustee to pay, disbursements of Johnson, Reif, Mullan through 6-8-77 in the amount of \$470.53. BURKE DJ
6-24-77	Filed Notice of Motion by N.N.S.
7-1-77	Filed Order declaring debtor to be insolvent, but to continue under Chapter X reorganization to enable the Trustee to prepare & submit a plan for liquidation, etc. Burke,DJ
6-27-77	Motion by Trustee to confirm in part and to modify in part, report of Bankruptcy judge. To be submitted August 10, 1977.

DATE	PROCEEDINGS
7/6/77	Filed order fixing hearing for 7/25/77, Burke DJ
7/6/77	Filed application to sell real property by Trustee, property located in the Town of Brockport, NY.
7-8-77	Filed Order extending Trustee's time to file a plan until 30 days after the status of the alleged defrauded stockholders' claim is finally determined.-Burke,DJ
7-13-77	Filed Month'y report of Operations of Business for the Month of June, 1977.
7/20/77	Filed affidavit of service by mail on Order fixing hearing.
7-26-77	Filed Order authorizing sale of Real property situated in the Village of Brockport, New York-Burke,DJ.
7-25-77	Hearing on Trustee's application to sell land in Brockport No opposition. Order to be submitted.
7-28-77	Filed DECISION and Order that the claims of allegedly defrauded stockholders are classified as subordinate to the claims of conventional general creditors.-BurkeDJ
8-8-77	Filed Motion by Trustee to confirm Findings and Recommendations of the Bankruptcy Court, ret. 9/12/77.
" "	Filed Affidavit of Service by Mail on Trustee's motion.
8-10-77	Filed Monthly report of Operations of Business for the Month of July, 1977.
8-17-77	Filed Notice of Appeal of Mrs. D. Windsor Dixon (copy mailed to Johnson, Reif & Mullan, Brown, Kelly, Turner, Hassett & Leach, Pomerantz, Levy, Haudek & Block, Milberg, Weiss, Bershad & Specthrie, Nixon, Hargrave, Devans & Doyle, Zalkin, Rodin & Goodman, Phillips, Lytle, Hitchcock, Blaine & Huber, Brown, Wood, Ivey, Mitchell & Petty and to Clerk, CCA with copy of docket entries; CCA's Forms C and D mailed to Mr. Bader)
8-26-77	Filed Notice of Appeal of Gregory Jezarian, Geraldine Jezarian, Lonetown Company and Harry E. Jones & Aleck Goldberg as custodian for Mark Goldberg (copy mailed to Johnson, Reif & Mullan; Brown, Kelly, Turner, Hassett & Leach; Bader and Bader, Esqs.; Nixon, Hargrave, Devans & Doyle; Zalkin, Rodin & Goodman; Phillips, Lytle, Hitchcock, Blaine & Huber; Brown, Wood, Ivey, Mitchell & Petty and to Clerk, CCA with copy of docket entries; CCA's Forms C and D mailed to Pomerantz, Levy, Haudek & Block with notice to Milberg, Weiss, Bershad & Specthrie)
8-29-77	Filed Notice of Appeal of Samuel H. Sloan (copy mailed to Johnson, Reif & Mullan, Brown, Kelly, Turner, Hassett & Leach, Pomerantz, Levy, Haudek & Block, Millberg, Weiss, Bershad & Specthrie, Bader & Bader, Nixon, Hargrave, Devans & Doyle, Zalkin, Rodin & Goodman, Phillips, Lytle, Hitchcock, Blaine & Huber, & Brown, Wood, Ivey, Mitchell & Petty, and to Clerk, CCA with copy of docket entries; CCA's Forms C and D mailed to Mr. Sloan)

SUPPLEMENTAL DOCKET ENTRIES

A 23

STIRLING HOMEX CORP.

BK-72-1399

DATE	PROCEEDINGS
9-2-77	Filed Application & ORDER authorizing the Trustee to pay Johnson, Reif and Mullan the sum of \$772.01 for expenses of administration.-Burke,DJ.
9-14-77	Filed Monthly Report of Business operations for the Month of August, 1977.
9-12-77	Motion by Trustee to confirm Findings and recommendations of Bankruptcy Court. No opposition. Submitted.
9-16-77	Filed Application by Trustee for authorization to sell Miscellaneous property at public auction.
" "	Filed Order fixing hearing on Trustee's application to sell property, ret. 9/26/77.-Burke,DJ
9-20-77	Filed Affidavit of service by mail of Order fixing Hearing filed 9/16/77..
9-26-77	Original pertinent papers, pertinent exhibits, docket entries and Clerk's certificate mailed to Clerk, CCA.
9-26-77	Hearing on Trustee's application for authority to sell remaining miscellaneous property by public auction. No opposition. Order to be submitted.
9-29-77	Filed Motion by Samuel H. Sloan for an order granting intervention, vacating the Order which adjudicated the Debtor to be insolvent, disqualifying the Trustee and reopening the transfer books of Stirling Homex, ret. 10/11/77.-Burke,DJ
10-5-77	Exhibits consisting of 8 proofs of claim and supplemental Clerk's certificate mailed to Clerk, CCA
10-6-77	Filed Order Authorizing Sale of miscellaneous property at Public Auction-Burke,DJ
10-7-77	Filed in Rochester, Affidavit by Chemical Bank in opposition to motion by Samuel H. Sloan.
10-13-77	Filed Monthly Report of Business operations for the Month of September, 1977.
10-17-77	Filed Amended Order apporving increase in Bond to Seven Million, Five Hundred Thousand Dollars.-Burke,DJ
10-11-77	Motion by Samuel Sloan for intervention, vacating order adjudication Debtor insolvent, disqualifying Trustee, Adj. to 10/25/77
10-19-77	Filed in Rochester, notice of appearance by Liebowitz, Platzer & Fineberg for Samuel H. Sloan.
10-20-77	Filed in Rochester, Affidavit of Thomas W. Petrillo in opposition to motions of Samuel H. Sloan.
" "	Filed in Rochester, Affidavit of Frank G. Raichle, Trustee, in opposition to motions of Samuel H. Sloan.
10-25-77	Filed Interrogatories by Chemical Bank, dated 7/16/75.
" "	Filed Second Set of Interrogatories by Chemical Bank, dated 7/21/75.
" "	Filed Transcript of proceedings before Hon. Harold P. Burke, on June 28, 1976.
" "	Filed Transcript of proceedings before Hon. Edward D. Hayes, on May 10, 1976.
	All documents filed on 10/25/77 were received by the Clerk on 10/25/77 for filing.

IN THE UNITED STATES DISTRICT COURT **A 24**
FOR THE WESTERN DISTRICT OF NEW YORK

In the Matter of
STIRLING HOMEX CORPORATION,
Debtor.

In Proceedings for the
Reorganization of a
Corporation
No. BK. 72-1399

In the Matter of
U. S. SHELTER CORPORATION,
Debtor.

No. BK. 72-1464

In the Matter of
U. S. HOME MANAGEMENT SERVICE, INC.,
Debtor.

No. BK. 72-1496

In the Matter of
PROGRESSIVE HOUSING CORPORATION,
Debtor.

No. BK. 72-1497

In the Matter of
CLAY DEVELOPMENT CORPORATION,
Debtor.

No. BK. 72-1498

In the Matter of
KABETH PROPERTIES, INC.,
Debtor.

No. BK. 72-1499

ORDER FIXING TIME AND MANNER OF FILING AND
ALLOWING PROOFS OF CLAIM AND OF STOCK INTERESTS.

FRANK G. RAICHLE, Trustee of each of the above-captioned debtors, having filed his petition for an order prescribing the manner in which, and the time within which, to file proof of claim in these proceedings, and no notice of hearing having been required, it is ORDERED:

1. All proofs of claim of creditors against the debtors or their property, of whatever character, either in tort or in contract, fixed or contingent, liquidated or unliquidated, other than those founded on bonds, bond interest coupons, or shares of stock, shall be filed with the Trustee of the debtors, at 10 Lafayette Square, Buffalo, New York 14203, on or before February 19, 1973; provided, however, that any person claiming to be damaged by the rejection of an executory contract subsequent to January 19, 1973, shall file his claim therefor within 30 days after the date of mailing of notice to such person of such rejection.

2. All proofs of claim of the interests of stockholders of said debtors shall be filed with said trustee, at his said office, at any time on or before the time to be fixed herein within which the creditors and stockholders of said debtors affected thereby may accept the plan or plans approved by this court pursuant to Section 174 of the Bankruptcy Act.

3. Claims of creditors which would have been provable in bankruptcy under Section 63 of the Bankruptcy Act shall be proven by the execution of a proof of claim therefor in accordance with the General Orders in Bankruptcy and the forms of proofs of claim prescribed by the Supreme Court of the United States, consisting generally of a statement in writing and signed by the creditors setting forth: the claim, the consideration therefor, whether any, and if so what, security is held therefor, and that the claim is justly owing from the debtor to the creditor.

4. Every proof of claim of a landlord for injury resulting from the rejection of an unexpired lease of real estate or for damages or indemnity under a covenant contained in such lease shall, in addition to the matters required by paragraph 3 hereof, contain: a true copy of such lease; the amount of unpaid accrued rent, without acceleration, up to the date of the surrender of the premises to the landlord or the date of the re-entry of the landlord, whichever first occurs; a detailed statement of all rents or other income, if any, received from such real property by the claimant subsequent to the date of the filing of the petition for reorganization herein, and prior to the date of filing of said proof of claim; a detailed estimate of the income reasonably expected to be received from the demised premises for the remainder of the term of such lease, which estimate shall include a complete statement of the ground on which the same is based and shall also include copies or detailed abstracts of any and all leases or other agreements relating to the occupancy of the demised premises by the claimant or his predecessor in interest subsequent to the date of such surrender or the re-entry and in effect at the time of the filing of said proof of claim; and an itemized statement of damages resulting from the rejection or breach of a covenant to make restoration, repairs or improvements to real property, including a detailed estimate of the cost of making such restoration, repairs or improvements which should include a complete statement of the ground on which the same is based.

5. All other claims from whatever cause arising, shall be proved by filing an affidavit of the claimant briefly setting forth the nature of the claim and the amount and itemization of damages demanded and the facts and circumstances upon which the claim is founded.

6. Where claims other than those provable under Section 63 of the Bankruptcy Act (11 U.S.C.A. §103) are secured, the proof of claim, as in other instances, shall set forth the nature and quantum of the security and the claimant's valuation thereof.

7. Stockholder's interests shall be proved by an affidavit executed by the claimant setting forth:

- a. the name and address of the holder;
- b. the kind of stock;
- c. the number of shares held by claimant;
- d. the respective dates of the acquisition of such shares.

8. Any proof of claim of creditors and of interests of stockholders heretofore filed in this proceeding substantially in such form shall be deemed to have been filed in accord with the provisions of this order.

9. Paragraph 1 of this order shall operate against all creditors, security holders and stockholders inclusive of the United States of America and of any state or political subdivision thereof.

10. On or before January 5, 1973 a copy of this order shall be mailed by the Trustee to all creditors and stockholders at the addresses shown on the records of the debtors or as otherwise known to the Trustee, and to the Securities and Exchange Commission. In the case of the United States, one copy shall

be mailed to the Treasury Department, another to the Attorney General and a third to the United States Attorney for the Western District of New York. In the case of any state or political subdivision, one copy shall be mailed to the Treasurer, Comptroller or other fiscal officer thereof. In addition, the Trustee shall publish or cause to be published a copy of this order, once during the month of January, 1973 in the *Wall Street Journal* and in the *Rochester Democrat and Chronicle*.

11. For the purposes of determining acceptances of any plan of reorganization and the sufficiency in number and amount thereof, a proof of claim properly executed and filed in accordance with the provisions of this order shall be deemed allowed, unless objections to the allowance thereof are filed at least three days prior to the date set for the hearing of an application to confirm such plan, except that no claim shall be counted, which has actually been disallowed prior to such hearing. Such objections may be filed by the respective debtor, by the Trustee or by any creditor, or by any stockholder, if the debtor is not insolvent.

Dated: Rochester, N. Y., December 11, 1972.

/s/ HAROLD P. BURKE
U. S. District Judge

RECEIVED
JAN 17 1973
ACCOUNTS PAYABLE

Y

36,000 / claim

disposition

*sent W/ FCR
on 1-1-73*

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

A 27

In the Matter
of
STIRLING HOMEX CORPORATION,
Debtor.

File No.

IN PROCEEDINGS FOR
REORGANIZATION OF A
CORPORATION UNDER
CHAPTER X OF THE
BANKRUPTCY ACT.

STATE OF PENNSYLVANIA
COUNTY OF PHILADELPHIA

HARRY E. JONES, residing at 20 South Fernwood Avenue,
Pitman, County of Gloucester, State of New Jersey, and ALECK
GOLDBERG, as Custodian for Mark Goldberg, residing at 1904-A
Mather Way, Elkins Park, County of Montgomery, State of
Pennsylvania, being duly sworn, depose and say:

1. That they hereinafter designate themselves as
Claimants.

2. That the above named Debtor was at and before
the filing by said Debtor of the petition for reorganization and
still is just and truly liable to the Claimants as follows:

HARRY E. JONES \$3,968.00

ALECK GOLDBERG, as Custodian for Mark Goldberg \$2,594.63

3. That the consideration of said liability is as
follows: The Debtor, Stirling Homex Corporation ("Stirling"), its
officers, directors, agents, servants and employees disseminated
between February 17, 1970 and July 12, 1972, in interstate commerce,
prospectuses, registration statements, annual reports of Debtor and

EXHIBIT "A"

other documents, containing misleading statements and omissions of material facts which overstated the income, assets, business and prospects of Stirling and otherwise violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b -5 promulgated thereunder. Claimants, relying on the said prospectuses, reports, registration statements and documents, the inflated price of Stirling securities caused thereby, the market climate induced thereby and the integrity of the market, purchased securities of Debtor in the open market and sustained losses and damages as a result thereof by reason of the reduction in value of the said securities when the truth was disclosed. The said acts, omissions and practices of the Debtor constituted violations of Section 10(b) and Rule 10b-5 of the Securities & Exchange Act of 1934 as well as violations of state and common law.

4. No part of the said debts or liabilities has been paid. There are no set-offs or counterclaims to said liabilities. Claimants do not hold and have not nor has any person by their order or to Claimants' knowledge or belief for their use had or received any security or securities for said liability. No note or other negotiable instrument has been received for such account or any part thereof; no judgment has been rendered thereon.

5. The said claim is filed individually on behalf of the Claimants and also on behalf of a class of persons similarly situated to the Claimants consisting of all other persons who purchased securities, common stock or otherwise, of the Debtor in the open market or otherwise, relying on the said prospectuses, registration statements, annual reports and documents, the inflated

prices of Stirling securities caused thereby, the market climate induced thereby and the integrity of the market and who were misled to their damage by the said material caused to be published and disseminated and their reliance on Debtor's compliance with its statutory and common law duty to disseminate to the public accurate, true and correct reports of its financial condition, the net income, business and prospects. The persons whom Claimants claim to represent herein are members of a class which is so numerous that the joinder of all in filing this claim would be impracticable. There are no questions of law and fact common to the class which predominate over any questions affecting only the individual members thereof. The claims asserted by the Claimants are typical of the claims of such class and Claimants will fairly and adequately represent the interests of such class. The filing of a class claim is superior to other available methods for fair and efficient adjudication of the controversy set forth herein. The amount of damages sustained by the class is estimated at at least \$30 million. There is attached hereto and made a part hereof a complaint filed in an action in the United States District Court for the Western District of New York entitled "H. E. Jones and Aleck Goldberg, etc., Plaintiffs against David Stirling, Jr., et al., Defendants, File No. 1972-579", which more particularly sets forth the facts with respect to the Claimants and the class claims herein. Claimants on their own behalf and on behalf of the class hereby reserve all rights against defendants named in the said complaint other than Debtor.

To: MILBERG & WEISS, or MARTIN S. HANDELMAN or RICHARD D. GREENFIELD
 c/o Martin S. Handelman
 306 Powers Building
 16 Main Street
 Rochester, New York 10614

Claimants on their own behalf and on behalf of the above class do hereby authorize you, or any one of you, or your representatives with full power of substitution, to attend all meetings of creditors of the Debtor aforesaid, and all adjournments thereof, at the places and times appointed by the court, and for Claimants and in the name of Claimants, to vote for or against any proposal or resolution that may be then submitted under the Bankruptcy Act, to vote for a trustee or trustees of the estate of the said Debtor and for a committee of creditors, to accept any arrangement or reorganization plan proposed by said Debtor in satisfaction of its debts, and to receive payment of dividends, and payment or delivery of money or of other consideration due Claimants under such arrangement or reorganization plan, and for any other purpose in Claimants' interest whatsoever; and with like powers to attend and vote at any meeting or meeting of creditors, or sitting or sittings of the court, which may be held therein for any of the purposes aforesaid. All prior powers of attorney are hereby revoked.

IN WITNESS WHEREOF the Claimants have hereunto signed their names and affixed their seals the 18th day of December, 1972.

Sworn to before me this 18th day of December, 1972, said subscribers being known to me to be the persons described in and who signed and swore to the above instruments and duly acknowledged that they executed them and were authorized to execute them.

Dorothy G. Jerolmack (L.S.)
 Notary Public of New Jersey
 My Commission Expires Sept. 1, 1975

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

A 31

IN THE MATTER
OF
STIRLING HOMEX CORPORATION,
Debtor.

In Proceedings for
Reorganization of a
Corporation Under
Chapter X of the
Bankruptcy Act

No. BK-72-1399

OBJECTION TO CLAIM

FRANK G. RAICHLE, as Trustee of STIRLING HOMEX CORPORATION, objects to the allowance of the claim of HARRY E. JONES, residing at 20 South Fernwood Avenue, Pitman, County of Gloucester, State of New Jersey and ALEC GOLDBERG, as custodian for MARK GOLDBERG, residing at 1904-A Mather Way, Elkins Park, County of Montgomery, State of Pennsylvania, heretofore filed herein on behalf of the claimants named above and purporting to be further on behalf of a class of persons claimed to be similarly situated to said claimants upon the following grounds:

1. The said debtor is not justly and truly indebted or otherwise obligated to said claimants or any class of persons claimed to be similarly situated to said claimants.

2. No proof of claim has been filed by any member of the purported class of persons described by claimants nor have such individuals designated the filing of such claims on their behalf.

3. A proof of claim on behalf of a class of individual is improper in a bankruptcy proceeding, inconsistent with the Bankruptcy Act, Rules of Procedure thereunder and is inappropriate under the circumstances of the present reorganization proceedings

4. Some or all of the individual members of the class purported to be represented by claimants herein are presently represented in numerous plenary actions previously consolidated pursuant to title 28 United States Code §1407 by order of the multi-judicial panel for the United States Courts before the Hon. Dudley B. Bonsal, United States District Judge for the Southern District of New York.

5. Upon such other and further grounds as may be appropriate herein.

Frank G. Raichle

Frank G. Raichle, Trustee of
Stirling Homex Corporation

Dated: , April 22, 1974

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NEW YORK

A 33

IN THE MATTER
OF
STIRLING HOMEX CORPORATION,
Debtor.

In Proceedings for
Reorganization of a
Corporation Under
Chapter X of the
Bankruptcy Act

No. BK-72-1399

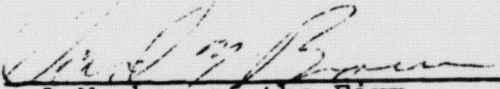
NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the proof of claim of HARRY E. JONES and ALEC GOLDBERG, as custodian for MARK GOLDBERG and the objections of FRANK G. RAICHLE as Trustee of the Debtor herein to such claims, which have previously been filed herein, and upon the annexed affidavit of DAVID M. BROWN, sworn to on the 22nd day of April, 1974, and all other proceedings heretofore had herein, a motion will be made before this Court on Monday, May 13th, 1974 at 10:00 a.m. in the United States Courthouse, 100 State Street, Rochester, New York 14614, or as soon thereafter as counsel can be heard for an order disallowing so much of the claim referred to herein as purports to be filed on behalf of a class of persons who are claimed to be similarly situated with the above-named claimants.

PLEASE TAKE FURTHER NOTICE that the Trustee will move to defer determination of the remainder of the Trustee's objections to the above-mentioned Proof of Claim pending decision on the

present motion and for such other and further relief as to this Court may seem just and proper.

JAECKLE, FLEISCHMANN & MUGEL

By: 

A Member of the Firm

Attorneys for Frank G. Raichle, Esq.
Trustee of Stirling Homex Corporation,
Debtor.

700 Liberty Bank Building
Buffalo, New York 14202

TO: ALVIN WEISS, ESQ.
Milburg & Weiss
2 Pennsylvania Plaza
New York, New York 10001.

MARTIN S. HANDELMAN
306 Powers Building
16 Main Street
Rochester, New York 14614
Attorneys for Claimants

IN THE UNITED STATES DISTRICT COURT FOR THE **A 35**
WESTERN DISTRICT OF NEW YORK

IN THE MATTER
OF
STIRLING HOMEX CORPORATION,
Debtor.

In Proceedings for
Reorganization of a
Corporation Under
Chapter X of the
Bankruptcy Act

No. BK-72-1399

DAVID M. BROWN, being duly sworn, deposes and says:

1. He is a member of the firm of Jaeckle, Fleischmann and Mugel, attorneys for Frank G. Raichle, Esq., trustee of the debtor named herein. He is familiar with the facts and circumstances of the reorganization proceedings and related matters and makes this affidavit in support of a motion on behalf of the trustee for an Order disallowing so much of the proof of claim previously filed by Harry E. Jones and Alec Goldberg, as custodian for Mark Goldberg, as purports to be filed on behalf of a class of persons claimed to be similarly situated with the above-named claimants.

2. Claimants Jones and Goldberg have previously filed a Proof of Claim in these proceedings alleging violations by the debtor corporation of Section 10(b) and Rule 10b-5 of the Securities and Exchange Act of 1934 as well as violations of state and common law. A copy of that Proof of Claim is attached hereto as Exhibit A. In support of such claim it is alleged generally that the debtor disseminated between February 17, 1970 and July 12, 1972 certain documents containing misleading statements and omissions of material facts concerning income,

assets, business and prospects of the debtor corporation. It is further alleged that the individual claimants purchased certain securities of the debtor in the open market in reliance upon the foregoing. The date upon which such purchases were made is not stated.

3. In addition to the individual claim asserted by Jones and Goldberg they further purport to file the above-referenced claim on behalf of a class of persons who it is said are similarly situated to them. That class is claimed to consist of all persons who purchased securities of the debtor corporation in reliance upon the same documents as did the individual claimants.

4. There has been no proof of claim filed on behalf of any individual who it is claimed is a member of this class. Furthermore, no individual members of that class has designated any person to file such a claim on their behalf.

5. In addition to the proof of claim filed herein and which is now the subject of the present motion, Messrs. Jones and Goldberg have previously commenced an action in the United States District Court for the Western District of New York (Civil 1972-579). That suit purports to be a class action on behalf of persons who purchased shares of the debtor corporation during the period of approximately February 19, 1970 through July 12, 1972. Violations of Section 10(b) of the Exchange Act and Rule 10b-5 are claimed in connection with various publically disseminated documents. In addition to this action there are presently nineteen (19) other actions pending in the various Federal District courts throughout the country involving allegations which are the same or similar to those contained in

the proof of claim filed by Messrs. Jones and Goldberg and in their Federal court plenary suit. In addition, the majority of these actions are in the form of class suits which purport to be on behalf of all individuals who purchased shares of the debtor corporation during various periods of time. These are precisely the same individuals which Messrs. Jones and Goldberg purport to represent in their proof of claim towards which this motion is directed. Moreover, by order entered December 1st, 1972, the Hon. Dudley B. Bonsal, United States District Judge for the Southern District of New York, entered an order determining that one such suit proceed as a class action and further designating that class as comprising all purchasers of shares of the debtor corporation during the period between March 16, 1971 and March 20, 1972.

6. Following motions to the judicial panel on multi-district litigation of the United States Courts all 20 federal court actions referred to above have been transferred outright or at least conditionally to the United States District Court for the Southern District of New York pursuant to Title 28 United States Code §1407.

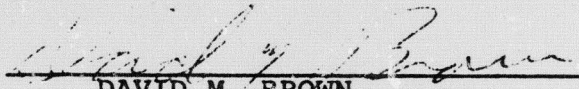
7. In view of the multiplicity of pending class action suits alleging claims and class members identical to those alleged by Messrs. Jones and Goldberg in their proof of claim in these proceedings, in view of the prior designation by Judge Bonsal of a class of individuals which would include those now attempting to be represented by Messrs. Jones and Goldberg in these reorganization proceedings, the disruption to the reorganiza-

tion proceedings which would be caused by the allowance of such a "class action" proof of claim, it is respectfully submitted to this Court that the relief now requested by the Trustee herein should be granted and that so much of the proof of claim of Messrs. Jones and Goldberg as purports to be on behalf of a class of individuals be disallowed.

8. In addition to the foregoing, it should also be pointed out that neither the Bankruptcy Act nor the rules of procedure thereunder authorize the filing of a proof of claim on behalf of a class of individuals. On the contrary, the Bankruptcy Act specifically provides that each individual claimant shall file their respective proof of claims in order to participate in the proceedings. Furthermore, rule 723 of the Rules of Bankruptcy Procedure, effective October 1st, 1973, specifically limits class action proceedings in bankruptcy to "adversary proceedings", which do not include the filing of a Proof of Claim or objections thereto. Accordingly, the Bankruptcy Act, the Rules of Bankruptcy Procedure, and the Advisory Committee Notes thereto specifically preclude the filing of a proof of claim in the form of or on behalf of any class of persons. Because of the importance of this matter to the reorganization proceedings, and the serious consequences that would flow from the ability of any claimant to file a proof of claim on behalf of a certain class of individuals, a memorandum of law is submitted to this Court herewith which will more fully amplify the lack of authority and the complete impropriety of such a filing.

WHEREFORE, your deponent respectfully requests an order of this Court disallowing so much of the proof of claim previously filed by HARRY E. JONES and ALEC GOLDBERG as guardian of MARK GOLDBERG as purports to be on behalf of a class of persons claimed to be similarly situated to said claimants. It is further requested that determination of the remainder of the Trustee's objections to that claim be held in abeyance pending determination of the present motion.

Respectfully submitted,


DAVID M. BROWN

Sworn to and subscribed before me
this 22nd day of April, 1974.


Notary Public

Exhibit A to foregoing
affidavit reproduced at
A27, supra.

In the Matter of
STIRLING HOMEX CORPORATION,
Debtor.

No. BK. 72-1399

In the Matter of
U. S. SHELTER CORPORATION,
Debtor.

No. BK. 72-1464

In the Matter of
U. S. HOME MANAGEMENT SERVICE, INC.,
Debtor.

No. BK. 72-1496

In the Matter of
PROGRESSIVE HOUSING CORPORATION,
Debtor.

No. BK. 72-1497

In the Matter of
CLAY DEVELOPMENT CORPORATION,
Debtor.

No. BK. 72-1498

In the Matter of
KABETH PROPERTIES, INC.,
Debtor.

No. BK. 72-1499

STATE OF NEW YORK :
COUNTY OF NEW YORK :
SS

SALVATORE BONFIGLIO: being duly sworn deposes and says:

I am over twenty-one years of age, and in the employ of the Corporate Trust Department of Chemical Bank, 55 Water Street, New York, New York 10041, Transfer Agent of STIRLING HOMEX CORPORATION.

On January 5, 1973 I caused to be mailed:

1. Copy of Court Order dated December 11, 1972

to each registered holder of certificate(s) for COMMON & PREFERRED STOCKS of STIRLING HOMEX CORPORATION, shown at the close of business December 29, 1972 on the record of such holders maintained by said Chemical Bank.

The item described above was enclosed and securely sealed in post-paid envelopes addressed to such holders at their respective addresses as shown on said record and deposited in the United States Branch Post Office located at Church and Vesey Streets, New York, New York.

Counterpart of such item is attached hereto.

Salvatore Bonfiglio

Sworn to before me this
27th day of May, 1975.

Meyer Schea

MEYER SCHEA
Notary Public, State of New York
No. 41-343705
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1977

Attachment to foregoing affidavit
reproduced at A24, supra.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

A 44

In the Matter

of

STIRLING HOMEX CORPORATION,

Debtor

CHAPTER X PROCEEDING

BK-72-1399

(Class action proof of claim of
Harry E. Jones and Alec Goldberg,
as custodian for Mark Goldberg)

Johnson, Reif & Mullan
47 South Fitzhugh Street
Rochester, N.Y. 14614
Attorneys for Trustee

Milberg & Weiss
1 Pennsylvania Plaza
New York, N.Y. 10001
Attorneys for claimants

By notice of motion with supporting papers
filed April 23, 1974 the Trustee in Reorganization moves
for an order disallowing so much of the claim of Harry E.
Jones and Alec Goldberg, as custodian of Mark Goldberg,
as purports to be filed on behalf of a class of persons
asserted to be similarly situated.

Harry E. Jones and Alec Goldberg, as custodian
for Mark Goldberg, commenced an action in this court against
certain corporate and individual defendants, including former
officers and directors of Stirling Homex Corporation. That
was a class action on behalf of all persons who bought

(7)

Stirling Homex Corporation shares during the period February 9, 1970 through July 12, 1972, the date of filing of the petition for reorganization in this proceeding. The complaint contains allegations of alleged violations of the federal securities laws.

On December 11, 1972 this court issued an order directed to the share holders and tort-creditors of Stirling Homex Corporation, amongst others, setting a date after which claims could not be filed with the Trustee. On or about January 5, 1973 the Trustee caused the transfer agent of Stirling Homex Corporation, Chemical Bank, to mail a copy of the bar-order to all shareholders at their addresses as shown on the records of the transfer agent. The Trustee caused to be published in the Wall Street Journal and the Rochester Democrat and Chronicle a copy of the bar-order.

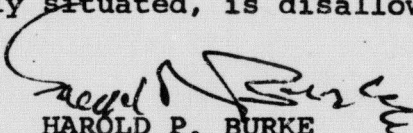
On January 14, 1973 Harry E. Jones and Alec Goldberg, as custodian of Mark Goldberg, filed a proof of claim as shareholder-tort creditors of Stirling Homex Corporation, individually and on behalf of a class of persons similarly situated. The Trustee filed objections to the individual claims and to the class action claims. Oral argument was had on the motion. The motion has been submitted for decision on written memoranda.

Section 57 of the Bankruptcy Act requires that each creditor shall file his proof of claim. Section 57 is made applicable to Chapter X proceedings by Section 102. Section 196 provides that the judge shall prescribe the manner in which proofs of claim may be filed.

The Bankruptcy Rules became effective October 1, 1973. Rule 723 provides that Rule 23 of the Federal Rules of Civil Procedure applies in adversary proceedings. Rule 701 defines adversary proceedings and does not include the filing of a claim. Rule 703 provides "An adversary proceeding is commenced by the filing of a complaint with the court."

Rule 914 makes rules other than those enumerated applicable in "contested proceedings" in the discretion of the court. The requisites of due process do not require the application of class action procedure in this proceeding. The members of the asserted class have had notice in accordance with due process.

ORDERED: So much of the proof of claim of Harry E. Jones and Alec Goldberg, as custodian for Mark Goldberg, as purports to be filed on behalf of a class of persons asserted to be similarly situated, is disallowed.


HAROLD P. BURKE
United States District Judge

FILED 1975.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

A 47

In Proceedings for the
Reorganization of a
Corporation

In the Matter of STIRLING HOMEX
CORPORATION, Debtor.

#BK 72-1399

In the Matter of U.S. SHELTER
CORPORATION, Debtor.

#BK 72-1464

In the Matter of U.S. HOME
MANAGEMENT SERVICE, INC., Debtor.

#BK 72-1496

Proceedings for
Substantive
Consolidation

In the Matter of PROGRESSIVE
HOUSING CORPORATION, Debtor.

#BK 72-1497

Answers to
First Set Bank's
Interrogatories

In the Matter of CLAY DEVELOPMENT
CORPORATION, Debtor.

#BK 72-1498

In the Matter of KABETH PROPERTIES,
INC., Debtor.

#BK 72-1499

Objection of Trustee of Stirling Homex Corporation
to Claimants' Interrogatories

FRANK G. RAICHLE, ESQ., Trustee in Reorganization of
Stirling Homex Corporation, objects to the interrogatories of
Chemical Bank, dated July 16, 1975 and interposed by Zalkin,
Rodin and Goodman, attorneys for Chemical Bank, on the ground
that Rule 733 of the Bankruptcy Rules and Rule 10-701 of the
Chapter X Rules permit the submission of interrogatories only
in adversary proceedings in a Chapter X case, and that the
proceeding herein is not an adversary proceeding but rather an
administrative proceeding praying for the substantive

consolidation of five wholly owned subsidiary corporations of Stirling Homex Corporation, both the subsidiaries and the parent being debtors in proceedings for reorganization of a corporation under Chapter X of the Bankruptcy Act and having the same Trustee.

ANSWERS

However, and without waiving said objections, and for the purpose of expediting these proceedings, the Trustee is prepared to make answers to certain of the interrogatories submitted on behalf of the Chemical Bank as follows. They are made upon information and belief. The information was received from records of the debtor and conversations with employees of the debtor:

INTERROGATORY #1

- (a) The amount of working capital of U.S. Shelter Corporation ("Shelter") for each of the three years preceding the filing of its petition for reorganization.

Answer: The initial working capital was \$100,000.00 contributed by Stirling Homex Corporation ("Homex") in 1970, upon sale of all of Shelter stock to Homex, in September 1970. In 1971 and 1972, Shelter had no working capital, except for temporary and sporadic infusions of cash by Homex.

- (b) Whether the company maintained individual accounting records and, if so, identify those records.

Answer: Yes. They are maintained at the office of Homex at Avon, New York and are available for inspection.

- (c) Whether the company maintained corporate minutes reflecting its activities.

Answer: There are minutes of meetings reflecting certain corporate actions which are available for inspection at the office of Homex, Avon, New York.

- (d) Whether the company maintained one or more bank accounts, and, if so, identify each such account and the average amount in each account during the year prior to the filing of the petition for reorganization.

Central Trust Company, Account #152-5393, Average Balance \$28,301.00.

Chemical Bank (N.Y.C.), Account #322-010276, Average Balance \$51,539.00.

American Security and Trust, Washington, D.C., Account #801-53539, Average Balance \$2,000.00.

- (e) Whether the company had its own stationery.

Answer: Yes.

- (f) Whether inter-company transactions between the company and Homex were evidenced by appropriate entries in the respective books of account of the companies.

Answer: In most instances.

- (g) Whether the company executed any contracts and, if so, identify each such contract.

Answer: Homex executed three contracts in the name of Shelter under an understanding with one Stanley Simon. These are available for inspection at the office of Homex, Avon, New York. All were to acquire financing.

Also an alleged contract having no substance was executed with Mississippi Greater Gulf Coast Housing Corp.

Credit Agreement with Chemical Bank.

(h) Whether the company maintained a listing with the telephone company.

Answer: Avon, New York no. Washington yes.

(i) With regard to the allegation that the business of Shelter was to provide financing on behalf of customers for Homex:

(i) Identify such customers.

Answer: Stanley Simon and Associates of New York City.

(ii) Describe with particularity the activities conducted by Shelter in providing financing and identifying the persons who carried out these activities.

Answer: Three separate financing arrangements.

Shelter nominally acquired financing for 3 Stanley Simon projects to wit: Utica, New York, Niagara Falls, New York and Brockport, New York.

Other activities were minimal and pro forma in that Shelter through Charles Marshall allegedly obtained financing for Mississippi Greater Gulf Coast Housing Corp. from Chemical Bank which because of its illusiory nature was not a commitment.

Persons involved, all Homex employees: James Wasson now of Kansas City; Charles Davis, present address unknown; Harvey Jeffers, present address Avon, New York; Clarence Richardson, present address unknown and Albert Miller, present address unknown.

(iii) State whether Shelter received fees or other compensation from Homex and/or the customers as

A 51

a result of its activities and, if so, set forth separately the amounts received from Homex and each customer annually for the years 1970 through the date of filing of Shelter's Petition for Reorganization.

Answer: The financial records of Shelter are so complex as to this subject that the Trustee cannot now answer this question. The records are available for inspection at the office of Homex in Avon, New York.

(iv) State whether in addition to providing financing on behalf of Homex for customers of Homex, Shelter conducted any other business from the date of its incorporation to the date of the filing of its petition for reorganization.

Answer: No.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
BANKRUPTCY COURT

A 52

In the Matter of
STIRLING HOMEX CORPORATION,

Debtor.

Re: Claims of:

The Chemical Bank, individually and as agent.
Chase Manhattan Bank, N.A.
Marine Midland Bank, as Successor to Marine Midland
Bank-Western and Marine Midland Bank-Rochester
Lincoln First Bank of Rochester formerly known
as Lincoln Rochester Trust Company *
First National Bank of Chicago
The Union Commerce Bank
The First National State Bank of New Jersey
Union Planters National Bank of Memphis

ORDER FIXING HEARING AND
DIRECTING SERVICE

In Proceedings for
Reorganization of a
Corporation Under
Chapter X of the Bankruptcy Act

No. BK-72-1399

In the Matter of

U. S. SHELTER CORPORATION,

No. BK-72-1464

Debtor.

Re: Claim of The Chemical Bank

Upon the petition of Frank G. Raichle, Trustee in Reorganization of Stirling Homex Corporation and U.S. Shelter Corporation, the above-named debtors, dated April 5, 1976; and upon the claims submitted by the banks noted above, the objections filed by the Trustee to said claims, and the answers and replies interposed by claimants to said objections, all of which documents are more fully described in the Trustee's application; and upon the Orders of the United States District Court, dated May 15 and 20, 1975, respectively, which referred to this Court the objections filed by said Trustee to the above-described claims, to hear and report on same, with findings and recommendations; and sufficient reasons appearing to me heretofore, it is

ORDERED, that May 10, 1976, at 10:00 a.m. at the United States Courthouse, 100 State Street, Rochester, New York, be, and hereby is, fixed as the time and place of a hearing upon the application of Frank G. Raichle, which application seeks approval to settle and/or otherwise compromise the aforementioned claims and objections upon the terms and conditions outlined in an Agreement executed by the Trustee on March 31, 1976, which Agreement is attached to the Trustee's petition, and to further determine whether this Court will recommend to the United States District Court that the terms and conditions set forth in the aforementioned Agreement be approved, rejected or otherwise modified or acted upon in a manner which may seem just and proper, and it is further

ORDERED, that any person electing to object shall file such objection in writing, with the Bankruptcy Court, and shall serve a copy of same upon the attorneys for the Trustee at the address listed on the Petition, on or before the 1st day of May, 1976, and it is further

ORDERED, it shall be deemed sufficient notice of the proceeding to be taken upon the Trustee's application and the aforementioned hearing if a copy of this Order, and of the petition upon which it is made, together with a copy of the Agreement, be served by ordinary mail on or before April 19, 1976, as follows:

1. Upon all creditors of Stirling Homex Corporation and U.S. Shelter Corporation enumerated in the list of creditors filed with the Reorganization Court on September 11, 1972, and all creditors who, while not so listed, have filed claims against said debtors.

Said notices shall be directed to the creditors at their addresses as set forth in the aforementioned list; if a different address is stated in a proof of claim filed within the above-entitled proceedings, at the address so stated.

2. Upon the shareholders of Stirling Homex Corporation and of U.S. Shelter Corporation at the addresses listed for said shareholders upon the records of the debtors as of December 31, 1973.

3. Upon the Securities and Exchange Commission, 26 Federal Plaza, New York, New York 10007; Attention: Marvin E. Jacob, Assistant Regional Administrator.

Dated: Rochester, New York
April 5, 1976.

HON. EDWARD D. HAYES
Bankruptcy Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
BANKRUPTCY COURT

A 53

In the Matter of

STIRLING HOMEX CORPORATION

Debtor.

Re: Claims of:

The Chemical Bank, individually and as agent.

Chase Manhattan Bank, N.A.

Marine Midland Bank, as Successor to Marine Midland
Bank-Western and Marine Midland
Bank-Rochester

Lincoln First Bank of Rochester formerly
known as Lincoln Rochester Trust Company

First National Bank of Chicago

The Union Commerce Bank

The First National State Bank of New Jersey

Union Planters National Bank of Memphis

PETITION

In Proceedings for
Reorganization of a
Corporation Under
Chapter X of the
Bankruptcy Act

No. BK-72-1399

In the Matter of

U. S. SHELTER CORPORATION,

Debtor.

No. BK-72-1464

Re: Claim of The Chemical Bank

TO: THE HONORABLE EDWARD D. HAYES, BANKRUPTCY JUDGE

Frank G. Raichle, Trustee in Reorganization of Stirling Homex Corporation and U.S. Shelter Corporation, respectfully states that:

1. By Orders of Federal District Court, Western District of New York, dated July 12, 1972 and July 21, 1972, he was appointed Trustee in Reorganization of Stirling Homex Corporation and U. S. Shelter Corporation, respectively.
2. On the 6th day of May, 1975, the Trustee filed the following objections: to the claim of Chemical Bank, filed on or about February 3, 1973; to the claims of Lincoln First Bank of Rochester and Union Planters National Bank of Memphis, filed on or about the 13th day of February, 1973; to the claim of First National Bank of Chicago, filed on or about the 15th day of February, 1973; to the claims of Chase Manhattan Bank, N.A., Marine Midland Bank-Western, Marine Midland Bank-Rochester, Union Commerce Bank, and First National State Bank of New Jersey, filed on or about the 16th day of February, 1973; to the claim of Chemical Bank against U.S. Shelter Corporation, a subsidiary of Stirling Homex Corporation, which claim was filed on or about February 18, 1973.
3. The United States District Court, by Orders of May 15 and May 20, 1975, respectively, referred to this Court the objections interposed by Trustee to said claims of the above-noted banks, to "hear and report . . . on the same with . . . findings and recommendations."
4. The general nature of the claims filed by the banks is to assert secured rights to assets of the debtor in the combined amount of approximately \$38,000,000.00.
5. The general nature of the objections filed by the Trustee on May 6, 1975 was to deny the validity of claimants' secured claims, and to request the Court to deem the interest of the claimant banks to be no greater than that of an unsecured general creditor, or, in the alternative, to subordinate whatever interest the Court deemed said banks to possess, to the interest of the general creditors.
6. Following the filing of said objections, the Trustee, through his counsel, conducted extensive research and review of the records of Stirling Homex Corporation and U.S. Shelter Corporation, interrogated numerous former and present Homex and Shelter employees and officers, engaged in extensive prehearing depositions and discovery proceedings, and otherwise attempted to analyze the validity of the claims as well as the potential of successfully securing from the Court an Order upholding Trustee's contentions that the banks should be deemed to have no greater rights than those of general unsecured creditors.

7. The Trustee has engaged in extensive prehearing negotiations with the claimant banks, including negotiations at a Court-directed prehearing conference, attempting to secure a settlement or compromise to these controversies which would recognize the merits of the Trustee's objections, but which would also recognize the limitations Trustee would face upon a trial upon the controversies, which limitations arise, in part, due to the general unavailability of records and witnesses to support Trustee's objections, due to the passing of time and removal of former officers and employees of Homex and Shelter from the Trustee's direction and control.

8. The Trustee and claimants have reached an agreement to settle or compromise these controversies which Agreement is attached hereto as Exhibit "A", and which is subject by its terms, to the approval of the Reorganization Court.

9. The general nature of the Agreement is to recognize the claims of the banks to the extent that these claimants shall be entitled to receive a pro rata share of the distribution of estate assets as any other general unsecured creditor.

10. Claimant banks would, if the Agreement is approved, release any and all secured interest they may hold in assets of Stirling Homex Corporation or any of its subsidiary corporations, and would be entitled to receive, from the Trustee, an immediate distribution of \$7,000,000.00, which sum shall be credited against the total distribution to which said claimants may be entitled, in no event to exceed the amount which they would have been entitled to receive had their claims been filed, and allowed, as general unsecured creditor claims, except as the contingencies provided for in paragraphs 3.1 and 3.2 of the Agreement shall become operative.

11. Trustee believes that this compromise Agreement is fair, and equitable to all creditors, and achieves the same result which the Trustee could have anticipated had he been successful upon a full and complete hearing, wherein proof was taken upon his objections to said claims, given the cost and delay in the administration of the debtor's estate which could have been anticipated by said hearing.

12. The compromise will further facilitate the administration of the debtor's assets by requiring the claimant banks to withdraw objections which they have filed to the Trustee's pending proceeding seeking to substantially consolidate the debtor and its subsidiaries, and will permit the Trustee to administer certain assets held by the banks under its claim of security, and otherwise permit the Trustee to secure immediate resolution of other pending administration matters which could not, because of the time required to be expended by Trustee and the staff of Homex in preparation for this matter, be pursued at this time.

13. The Trustee has not attempted, in this petition, to detail all of the conditions or requirements of the Agreement, and refers the Court, and interested parties, to the specific terms of the Agreement, attached to this petition, for a more complete and comprehensive understanding of its terms and conditions which, trustee understands, will bind the Trustee and the claimant banks, if approved, rather than the general statements set forth in this petition.

WHEREFORE, petitioner requests that an Order be issued by this Court fixing a hearing upon this application and the Agreement, and that following said hearing, the Court make findings that the Agreement is fair and equitable, and further recommend to the United States District Court that same be approved.

Petitioner further requests that the Court specify the nature of the notice of said hearing to be served pursuant to Rule 10-209.

Dated: Rochester, New York
April 5, 1 /6

FRANK G. RAICHLE

JOHNSON, REIF AND MULLAN, P.C.
Attorneys for Trustee
47 South Fitzhugh Street
Rochester, New York 14614
716-262-5700

AGREEMENT, made as of this 31st day of March, 1976, between and among FRANK G. RAICHLE, as Reorganization Trustee ("Trustee") of Stirling Homex Corporation ("Debtor") and as reorganization trustee of the undersigned subsidiary debtor corporations, and the undersigned subsidiary debtor corporations, and the undersigned banks (individually, a "Bank" and collectively, the "Banks").

THIS AGREEMENT IS MADE WITH REFERENCE TO THE FOLLOWING FACTS

A. On July 12, 1972, the Debtor filed a petition under Chapter X of the Bankruptcy Act, as amended (the "Act") in the United States District Court for the Western District of New York (the "Reorganization Court") (Case No. 72 B 1399); thereafter the Trustee was duly appointed as such, qualified, and has acted and continues to act as such Trustee;

B. thereafter, the following wholly-owned subsidiaries of the Debtor filed petitions under Chapter X of the Act in the Reorganization Court, and the Trustee was duly appointed as trustee in reorganization for each of said subsidiaries, qualified as such, and has acted and continues to act as such trustee for each of such subsidiaries:

U.S. Shelter Corporation, Case No. 72 B 1464

U. S. Home Management Service, Inc., Case No. 72 B 1496

Progreessive Housing Corporation, Case No. 72 B 1497

Clay Development Corporation, Case No. 72 B 1498, and

Kabeth Properties, Inc., Case No. 72 B 1499;

C. thereafter, each Bank timely filed a proof of secured claim against the Debtor with the Trustee, claiming a security interest and lien in (i) inventory and accounts of the Debtor, together with proceeds thereof, and related documents (as defined in the proof of claim), (ii) 1,000 shares of the capital stock, \$10 par value of U.S. Shelter Corporation and (iii) 200 shares of the no par value capital stock of Kabeth Properties, Inc., (collectively, the "Collateral"), and Chemical Bank ("Chemical") filed a proof of secured claim with the trustee in reorganization of U.S. Shelter Corporation ("Shelter") claiming a security interest and lien upon contracts of Shelter (more fully described in Section 6 of said proof of claim) (the "U. S. Shelter Collateral"), all of which proofs of claim are more fully described on Schedule I annexed hereto and made a part hereof, in accordance with an order fixing time and manner of filing and allowing proofs of claim and of stock interests made by United States District Judge Harold P. Burke, and dated December 11, 1972 (the "Bar Order"), which said Bar Order was entered in the reorganization proceedings of the Debtor and the reorganization proceedings of all of the subsidiaries of the Debtor named in clause B above;

D. thereafter, the Trustee filed objections to the proof of secured claim of each Bank, and also filed an objection to the proof of secured claim filed by Chemical in the reorganization proceedings of Shelter;

E. the claimant Banks and the Trustee have been engaged in depositions and other pre-trial discovery proceedings with respect to the issues arising from the Trustee's aforementioned objections;

F. by order to show cause dated June 16, 1975, the Trustee, in his capacity as Trustee of the Debtor and as trustee in reorganization of the subsidiaries described in clause B above, petitioned the Reorganization Court for an order to substantively consolidate the assets and liabilities of the Debtor with those of its subsidiaries, to declare the assets and liabilities of such subsidiaries to be the assets and liabilities of the Debtor, to declare such subsidiaries to be without separate identity and to consolidate all of the reorganization proceedings relating to the Debtor and its subsidiaries in one proceeding to be entitled:

"IN THE MATTER OF
STIRLING HOMEX CORPORATION,
Debtor.
Index Bk 72-1399"

G. certain of the Banks filed answers in opposition to the Trustee's petition for substantive consolidation described in clause F above, and the parties have been thereafter engaged in pre-trial discovery with respect to such pending petition;

H. the Trustee has informed the Banks that the total claims filed against the Debtor and the subsidiaries described in clause B above (exclusive of the claims of the Banks) prior to the last day to file claims set forth in the Bar Order (whether as claims entitled to priority or as general, unsecured claims, and inclusive of the claim of Travelers Indemnity Company) aggregate approximately \$12,500,000, of which approximately \$1,400,000 may be entitled to priority status and \$11,100,000 to the status of general unsecured claims.

I. the Trustee, as trustee in reorganization of the Debtor and of each of the subsidiaries of the Debtor, and each and all of the Banks, desire to compromise and settle the dispute with respect to the Banks' claims against the Debtor and each of its subsidiaries, and based upon such compromise and settlement, to cooperate so as to effect the substantive consolidation sought by the Trustee;

NOW, THEREFORE, the undersigned parties have agreed with each other, and each of the undersigned Banks have agreed with the Trustee, as trustee in reorganization of the Debtor and of each of the subsidiaries of the Debtor, as follows:

1. Payment by Trustee to Banks in

Consideration for Release of
Security Interests and Liens

Upon the Closing Date of this agreement (as defined in section 2.2 hereof),

(a) the Trustee shall forthwith pay to each Bank, by cashier, official or certified check drawn upon an authorized depository of the Reorganization Court or upon a member bank of the New York Clearing House, the amount set forth on Schedule II annexed hereto, and made a part hereof; and

(b) concurrently with such payment each Bank shall be deemed to have released and withdrawn its security interest and lien upon the Collateral and the U.S. Shelter Collateral; and

(c) each of the parties to this agreement, by their respective counsel of record, shall execute a stipulation, to become effective upon the approval by the Reorganization Court, consenting to the discontinuance of the objection proceedings described in recital clause D, with prejudice and without costs to any party hereto as against any other party.

2. Effective Date: Closing Date

2.1 This agreement shall be and become effective (the "Effective Date") upon the entry of an order (the "Approval Order") by the Reorganization Court having jurisdiction over the Debtor and each of its subsidiaries, upon notice to all creditors and parties in interest of the Debtor and each subsidiary, in accordance with Rule 10-209 of the Chapter X Rules (i) approving of this agreement in all respects and directing that the Trustee make the payments to the Banks described in section 1 of this agreement and further directing the execution and delivery by all of the undersigned parties hereto of any document or instrument necessary or appropriate to consummate the transactions contemplated by this agreement; (ii) granting the Trustee's petition for substantive consolidation, as more fully described in recital clause F hereof, which each Bank hereby consents to and each Bank which has filed an answer in opposition thereto, hereby withdraws said answer (subject to the termination provided in Section 7) and (iii) allowing, as unsecured claims and/or administration claims, with respect to each Bank, the amount(s) set forth on Schedules III, IV and V annexed hereto and made a part of this agreement.

2.2 The payments required to be made by the Trustee under Section 1 of this agreement shall be delivered by the Trustee at his offices, at 2:00 p.m., Buffalo, New York time, on the tenth (10th) consecutive business day from the date such Approval Order becomes a Final Approval Order (the "Closing Date"). "Final Approval Order" for all purposes of this agreement, shall mean the Approval Order, from which no further appeal or petition for a writ of certiorari or petition for rehearing, before the United States Court of Appeals for the Second Circuit or Supreme Court of the United States or any extension of time to do any of the foregoing, can be had or granted, as the case may be.

3. Dividends Upon the Banks Allowed Claims

3.1 Upon the date that the Approval Order becomes Final, and subject to the provisions of section 3.2 hereof, each of the Banks agrees that future dividends or distributions ("Dividends") payable upon its allowed claims as described in Schedules III and IV hereof, shall be calculated so that each Bank shall receive the same pro rata Dividend upon the aggregate amount of its allowed claim(s) as described in Schedules III and IV hereof, as all other allowed, unsecured general claims against the consolidated Debtor shall be entitled to receive, but there shall be credited against such Dividends payable to such Bank under this Section 3.1, the amount paid to each Bank under Section 1 (as described in Schedule II hereof), provided, however, that nothing contained in this Section 3.1 or in this agreement shall obligate or require any of the Banks to return to the Trustee or to any other claimant of the consolidated Debtor, the amount, or any portion thereof, paid to any Bank under Section 1 of this agreement (as described in Schedule II hereof) for any reason whatsoever.

3.2 If, notwithstanding the Bar Order, additional claims are filed and allowed, and are entitled to any distribution or dividend from the assets of the consolidated Debtors, either as priority claimants, or as general, unsecured claimants on a parity with the allowed claims of the Banks as set forth on Schedules III and IV (the "Additional Claims"), and such Additional Claims having priority status exceed \$500,000 in the aggregate, or such Additional Claims having unsecured claimant status exceed \$1,000,000 in the aggregate, then and in such event, the Dividends to be paid upon the allowed claims of the Banks as described in Schedules III and IV hereof, shall be calculated using the actual amounts of the allowed claims except that the total allowed priority claims shall be calculated at no more than \$1,900,000 and the total allowed general, unsecured claims shall be calculated at no more than \$50,168,206, and there shall be credited against such Dividends payable to each Bank, the amount paid to each Bank under Section 1 of this Agreement.

4. Proceeding with Respect to Claims

The Trustee shall give prompt written notice to the Banks at the addresses set forth in Schedule VI annexed hereto and made a part hereof, or to such other person and at such other address as any of the Banks may request in writing, of all pending proceedings or proceedings hereafter instituted by him, to reduce or expunge claims filed in excess of \$25,000 (other than the claims of the Banks).

5. Successors and Assigns

This agreement shall insure to the benefit of and bind each of the undersigned parties hereto, their respective successors or assigns, and with particular respect to the Trustee, any successor or additional trustee in reorganization or any trustee in bankruptcy of the consolidated Debtor.

6. Entire Agreement

This agreement represents the entire understanding of each of the parties hereto and may not be terminated (other than as provided in section 7 hereof), modified or amended, except by means of a writing signed by all of the parties hereto.

7. Termination Date

This agreement shall terminate if (i) the Approval Order has not been entered on or prior to the sixtieth (60th) day from the date of this agreement, or (ii) the Approval Order does not become a Final Approval Order on or prior to the one hundred sixtieth (160th) day from the entry of such Approval Order, unless all of the parties hereto shall, by means of a writing, extend the time periods provided in clauses (i) or (ii) of this Section 7.

8. Continuing Jurisdiction

The Reorganization Court, or a bankruptcy court having jurisdiction over the proceedings of the consolidated debtors in the event of the entry of an order of adjudication, shall have continuing jurisdiction over all parties hereto to supervise the enforcement of this agreement.

9. Captions

The captions contained in this agreement have been inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this agreement nor the intent of any provision hereof.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals, or have executed this agreement by their duly authorized officers, the day and year set forth above.

FRANK G. RAICHLE, As Trustee in Reorganization of Stirling
Homex Corporation, Debtor

FRANK G. RAICHLE, As Trustee in Reorganization of U.S.
Shelter Corporation, Debtor

FRANK G. RAICHLE, As Trustee in Reorganization of U.S.
Home Management Service, Inc., Debtor

FRANK G. RAICHLE, As Trustee in Reorganization of
Progressive Housing Corporation, Debtor

FRANK G. RAICHLE, As Trustee in Reorganization of Clay
Development Corporation Debtor

FRANK G. RAICHLE, As Trustee in Reorganization of Kabeth
Properties, Inc., Debtor

CHEMICAL BANK

THE CHASE MANHATTAN BANK, N.A.

THE FIRST NATIONAL BANK OF CHICAGO

MARINE MIDLAND BANK, as Successor to Marine Midland
Bank—Western and as Successor to Marine Midland Bank—
Rochester

UNION COMMERCE BANK

LINCOLN FIRST BANK OF ROCHESTER, formerly known
as Lincoln Rochester Trust Company

FIRST NATIONAL STATE BANK OF NEW JERSEY

UNION PLANTERS NATIONAL BANK OF MEMPHIS

SCHEDULE I

A 58

BANK CLAIMS FILED AGAINST DEBTOR

<u>Name of Bank</u>	<u>Amount of Claim</u>
Chemical Bank	\$19,990,702.03
	\$ 2,480.72
The Chase Manhattan Bank, N.A.	\$ 4,102,659.53
	\$ 1,425.45
The First National Bank of Chicago	\$ 4,118,514.36
	\$ 2,480.72
Marine Midland Bank-Rochester (now known as Marine Midland Bank)	\$ 1,240,382.67
Marine Midland Bank-Western (now known as Marine Midland Bank)	\$ 2,469,699.39
Union Commerce Bank	\$ 1,641,107.24
Lincoln First Bank of Rochester (formerly known as Lincoln Rochester Trust Company)	\$ 2,386,032.89
First National State Bank of New Jersey	\$ 1,292,667.39
Union Planters National Bank of Memphis	\$ 822,534.77
	\$ 2,480.72

BANK CLAIMS FILED AGAINST SHELTER

Chemical Bank	\$15,937,640.20
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SCHEDULE IIAMOUNT PAYABLE TO BANKS UNDER
SECTION 1(a) OF THE AGREEMENT

<u>Name of Bank</u>	<u>Amount</u>
Chemical Bank	\$1,272,726.00
The Chase Manhattan Bank, N.A.	\$1,272,726.00
The First National Bank of Chicago	\$1,272,726.00
Marine Midland Bank—Rochester (now known as Marine Midland Bank)	\$ 509,089.00
Marine Midland Bank—Western (now known as Marine Midland Bank)	\$ 763,637.00
Union Commerce Bank	\$ 509,089.00
Lincoln First Bank of Rochester (formerly known as Lincoln Rochester Trust Company)	\$ 763,637.00
First National State Bank of New Jersey	\$ 381,822.00
Union Planters National Bank of Memphis	\$ 254,548.00
Total	\$7,000,000.00

SCHEDULE III

A 59

ALLOWED CLAIMS (inclusive of principal
and accrued and unpaid interest to July 12, 1972)

<u>Name of Bank</u>	<u>Amount</u>
Chemical Bank	\$4,073,136.50
The Chase Manhattan Bank, N.A.	\$4,102,659.53
The First National Bank of Chicago	\$4,118,514.36
Marine Midland Bank—Rochester (now known as Marine Midland Bank)	\$1,240,382.67
Marine Midland Bank—Western (now known as Marine Midland Bank)	\$2,469,699.39
Union Commerce Bank	\$1,641,107.24
Lincoln First Bank of Rochester (formerly known as Lincoln Rochester Trust Company)	\$2,386,032.89
First National State Bank of New Jersey	\$1,235,578.41
Union Planters National Bank of Memphis	\$ 822,534.77

SCHEDULE IVOTHER ALLOWED BANK CLAIMS

<u>Name of Bank</u>	<u>Nature of Claim</u>	<u>Amount</u>
Chemical Bank	Principal and accrued interest to July 21, 1972 upon the indebtedness of Shelter	\$15,918,728.23
	Unpaid commitment fee to July 10, 1972 under Shelter agreement	4,113.57
	Accrued and unpaid service fee to July 10, 1972 under Shelter agreement	14,798.40
		\$15,937,640.20
Chemical Bank	Commitment fee under loan agreement with Debtor	\$ 2,480.72
Chemical Bank	Unpaid transfer agent fees to July 12, 1972 for services as Debtor's transfer agent	\$ 15,260.01
The Chase Manhattan Bank, N.A.	Unpaid registrar fees to July 12, 1972 for register of Debtor's securities	\$ 1,425.45

SCHEDULE VALLOWED BANK ADMINISTRATION CLAIMS

<u>Name of Bank</u>	<u>Nature of Claim</u>	<u>Amount</u>
Chemical Bank	Administration claim for post-petition transfer agent services	\$25,396.01

SCHEDULE VI

A 60

Chemical Bank
c/o Zalkin, Rodin & Goodman
750 Third Avenue
New York, New York 10017

The Chase Manhattan Bank, N.A.
c/o Milbank, Tweed, Hadley & McCloy
One Chase Manhattan Plaza
New York, New York 10005

The First National Bank of Chicago
c/o Yellon, Arneson & Davenport
One First National Plaza
Chicago, Illinois 60670

Marine Midland Bank
c/o Phillips, Lytle, Hitchcock, Blaine & Huber
3400 Marine Midland Center
Buffalo, New York 14203

Union Commerce Bank
c/o Debevoise, Plimpton, Lyons & Gates
299 Park Avenue
New York, New York 10017

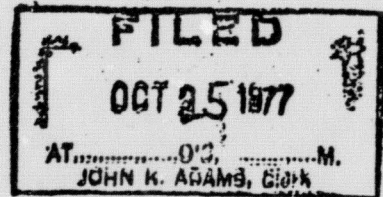
Lincoln First Bank of Rochester
c/o Nixon, Hargrave, Devans & Doyle
Lincoln First Tower
Rochester, New York 14603

First National State Bank of New Jersey
c/o Raff and Scheider
11 Commerce Street
Newark, New Jersey 07102

Union Planters National Bank of Memphis
c/o Debevoise, Plimpton, Lyons & Gates
299 Park Avenue
New York, New York 10017

ROBERT J. KANE

Tel. 454-4519



**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

Statements

In the Matter of **STIRLING HOMEX CORPORATION,**
Debtor.

BK # 72-1399

RE: Claims of:

Examinations
Before Trial

The Chemical Bank, Individually and as Agent.

Chase Manhattan Bank, N. A.

Marine Midland Bank, as Successor to Marine
Midland Bank-Western and Marine Midland Bank-Rochester

Depositions

Lincoln First Bank of Rochester, formerly known
as Lincoln Rochester Trust Company

First National Bank of Chicago

The Union Commerce Bank

Conferences

The First National State Bank of New Jersey

Union Planters National Bank of Memphis

Conventions

In Proceedings for Reorganization of a Corporation
Under Chapter X of the Bankruptcy Act.

Arbitrations

In the Matter of **U. S. SHELTER CORPORATION,**
Debtor.

BK # 72-1464

RE: Claim of The Chemical Bank.

1 PROCEEDINGS held in the above matter at
2 United States Bankruptcy Court, U. S. Courthouse, 100 State
3 Street, Rochester, New York, on May 10, 1976, commencing at
4 approximately 10:00 A.M., before HONORABLE EDWARD D. HAYES,
5 Bankruptcy Judge.

6
7
8 APPEARANCES:

JOHNSON, REIF & MULLAN, P.C.,
By BYRON JOHNSON, Esq.,
9 And THOMAS W. PETRILLO, Esq.,
47 South Fitzhugh Street,
10 Rochester, New York, 14614,
Appearing of Counsel for
11 Frank G. Raichle, Trustee.

12 ZALKIN, RODIN & GOODMAN,
13 By HENRY L. GOODMAN, Esq.,
750 Third Avenue,
14 New York, New York, 10017,
Appearing for The Chemical Bank.

15
16 SHERMAN I. GOLDBERG, Esq.,
One First National Plaza,
17 Chicago, Illinois, 60670,
Appearing for First National Bank
18 of Chicago.

19
20 NIXON, HARGRAVE, DEVANS & DOYLE,
By EDWARD J. BURNS, Esq.,
Lincoln First Tower,
21 Rochester, New York, 14603,
Appearing for Lincoln First Bank
22 of Rochester.

1 RAFF & SCHEIDER, P.C.,
2 By ARTHUR C. LINDERMAN, Esq.,
3 11 Commerce Street,
4 Newark, New Jersey, 07102,
5 Appearing for The First National
6 State Bank of New Jersey.

7 ABC LETTER SERVICE,
8 By WILLIAM PEPPER,
9 1500 Brighton- Henrietta Town Line Road,
10 Rochester, New York.

11 DANIEL BLAKE,
12 May Road
13 Conesus, New York.

14 MODEX BUILDING SUPPLY CO., INC.,
15 By WALTER R. CLEMENT,
16 90 Lee Road,
17 P.O. Box #7823,
18 Rochester, New York, 14606.

19 * * *

1 THE COURT:

Mr. Johnson, do you want to proceed?

2 MR. JOHNSON:

3 Yes, Your Honor, my first witness is
4 Frank G. Raichle, the Trustee. At
5 the outset, Your Honor, I would like
6 make mention of the Order fixing this
7 date for hearing, dated April 5th,
8 1976, and signed by the Honorable
9 Edward D. Hayes, Bankruptcy Judge, as
10 well as the petition to this court
11 dated April 5th, 1976, and signed by
12 Frank G. Raichle, the Trustee, to
13 which was attached the agreement
14 made as of the 31st day of March,
15 1976, between Frank G. Raichle as
16 Reorganization Trustee, and the banks
17 who are signatories thereto, being
18 The Chemical Bank, Chase Manhattan
19 Bank, N. A., First National Bank of
20 Chicago, The Marine Midland Bank, as
21 Successor to Marine Midland Bank-
22 Western and Marine Midland Bank of
23 Rochester, The Union Commerce Bank,
Lincoln First Bank of Rochester, the

1 First National State Bank of New
2 Jersey, and the Union Planters
3 National Bank of Memphis. I would
4 like to direct the attention of the
5 Court that proof of service of the
6 Order and the petition with agreement
7 attached has been filed.

8 THE COURT: Thank you.

9
10
11 FRANK G. RAICHLE, Trustee, after being duly
12 called and sworn as a witness in these proceedings, testified
13 as follows:

14
15 EXAMINATION BY MR. JOHNSON:

16 Q. Mr. Raichle, would you state your name and address, sir?

17 A. Frank G. Raichle, 80 Middlesex Road, Buffalo, New York.

18 Q. And you are the Trustee in reorganization of Stirling
19 Homex Corporation?

20 A. I am.

21 Q. And would you state the date of your employment?

22 A. July 13th, 1972.

23 Q. Mr. Raichle, what is your professional background?

1 A. Well, I'm a lawyer, duly admitted to practice before the
2 Courts of the State of New York, the United States Supreme
3 Court, and in the Federal Hierarchy, also the Second,
4 Seventh, Ninth Circuit Courts of Appeal and all of the
5 Districts, Federal District Courts in New York.

6 Q. And what is your business background in addition to your
7 background as an attorney, Mr. Raichle?

8 A. Well, that, incident to representing business corporation
9 I've also served as an officer and director of some
10 corporations, some listed companies, companies engaged
11 in various lines of activity. I have prior to my
12 appointment here participated in corporate reorganizations
13 in New York and Delaware. I could give one or two names
14 if you want me to.

15 Q. I think it would help.

16 A. One that occurs to me is the Sterling Engine Company,
17 spelled with an "e" instead of an "i". It's now known as
18 Sterling Precision on the big board. It is and was a
19 conglomerate. It was reorganized in the Western District
20 of New York under the supervision of Judge Knight. I was
21 not only counsel but I think I went through all the chairs,
22 including President and Chairman of the Board. I hasten
23 to say that that was after the reorganization and not the

1 cause of the reorganization.

2 Q. Mr. Raichle, it's safe to say then that you have an
3 extensive business background and that your practice has
4 embraced corporate and business as well as criminal law?

5 A. I'll rise above modesty to say that's so.

6 Q. Can you give us a brief history of your work with Stirling
7 Homex reorganization?

8 A. It's very hard to make it brief, but I shall try. At the
9 time of my appointment and within the matter of hours,
10 certainly days, I met with the representatives of the
11 creditor banks and a series of meetings ensued. I met
12 with certain representatives of the company, I tried to
13 familiarize myself with the background and with the
14 problems. At the time we had hopes, rather high hopes,
15 that the corporation could be reorganized in the sense
16 of floating out a viable operating company. The figures
17 available at the time of the filing of the petition on
18 July 12th, 1972, seemed to indicate that possibly that
19 could be done, if financing could be arranged and we
20 could get some surcease from the very pressing claims of
21 certain creditors. I remember I began to receive
22 communications at my home that the telephone service was
23 going to be turned off if the telephone bills weren't paid.

1 I began to receive telegrams and other communications from
2 creditors, and I had the usual problem of survival for a
3 matter of weeks. The banks had set off, as creditors,
4 the balances of Stirling Homex and its subsidiaries
5 against indebtedness. Early in the course of the
6 proceedings I prevailed upon the banks to loan on a basis
7 of Trustee's Certificates money to pay insurance premiums.
8 A very pressing problem in the beginning of the Trusteeship
9 was the matter of protecting the then existing assets of
10 the company. There were on hand at various staging areas
11 approximately, and in round figures, ten thousand
12 completed modules. The inventory also consisted of items
13 used -- useful in the manufacture of modules and their
14 installation, machinery and equipment, too. The insurance
15 companies threatened to cancel insurance and it was a
16 matter of almost day to day contact to keep the insurance
17 alive. The staging areas were rather far flung, there
18 was one, of course, at the plant, and a very large one
19 at Caldonia, one at Honeoye Falls, one at Clay, New York,
20 a suburb of Rochester, and then there was some modules
21 located in Akron, Ohio. The insurance cost was great.
22 There was not only the danger of fire and ravages of the
23 elements, there was the danger of vandalism, and one of

1 the first things to be done was to see that the property
2 in question was adequately insured. Insurance policies
3 had rather stringent conditions with respect to the
4 security to be maintained, and that has been -- was then
5 and has been throughout a rather costly item of expense.
6 I paid the insurance companies with the proceeds of
7 Trustee Certificates. I tried to boil this down. We
8 retained the Liesdorf firm as auditors to get busy at
9 once to make an audit as of July 12th, 1972, the date of
10 the filing of the petition. I set about as best I could
11 to see if it would be possible to reorganize, as I say,
12 in the sense of continuing an operation through a viable
13 company, to use the word again. Operations had ceased as
14 of July 11, 1972, and in short I was never able to see
15 my way clear to start them even on a much reduced basis.
16 I soon encountered the fact that the recession was setting
17 in, call it what you will by name, I found that the
18 concept of modular homes built on a production line and
19 shipped to prepared sites for location there was falling
20 in disfavor, that other companies engaged in the business
21 were one by one going out of the business. I found that,
22 unfortunately, that the Stirling-Homex name was in
23 disrepute and that the matter of reorganization in the

1 conventional sense of the term as I've used it before was
2 impossible. The best enducement to others to participate
3 in any attempted reorganization which would permit a
4 continuance of the business was a loss carried forward
5 in undetermined amounts, and after a while it became
6 indeed obvious that the company could not be reorganized
7 and that a liquidation was the most that could be hoped
8 for. Anticipating either or both courses, reorganization
9 or liquidation, I, of course, had the task of liquidating
10 and turning into cash the ten thousand modules, and also
11 the sale of odds and ends of real estate in various
12 places that I could see would never be used. The modules
13 were not easy to sell. Perhaps the most fortuitous thing
14 I can claim credit for is I placed the sale of modules
15 under the direction of Charles Northrup, who has done a
16 wonderful job in disposing of the same. We now have, as
17 as result of the sale of modules over theyears, despite
18 the difficulties we have somewhere around a thousand
19 modules left, perhaps a little less than that. You can
20 readily appreciate that the sale of modules, difficult as
21 it was, also involved the delivery of the modules to the
22 purchaser. We worked out a so-called standard contract
23 for the sale of modules where we conveyed title immediately

1 upon the sale and the modules were continued at the
2 purchaser's risk under arrangements which enabled us to
3 shift to him the cost -- some of the cost of the insurance.
4 We rented our trailers, of which we had a great number,
5 which were used for the delivery of modules, we rented
6 those to purchasers and thereby received some, you might
7 say operational income. We had a train, it wasn't ours
8 as far as title was concerned, but we had a lease of, I
9 think fifty or more rail cars, flat cars, on which we
10 were able to ship these modules to distant points, as far
11 as Circinnati, and I think we made one shipment up in
12 Maine, in very bad weather, I remember, with some
13 complications. We shipped some to New Jersey, we shipped
14 some elsewhere. So, as I say, the ten thousand modules
15 have been reduced to approximately a thousand. Now,
16 getting perhaps to that which is perhaps more pertinent
17 to the inquiry here, we did do the things required by
18 the statute, if I might make a self-serving remark, we
19 followed the routine, we advertised, we applied for a
20 cut-off date so far as the filing of the claims is
21 concerned. We received claims within the date fixed by
22 the so-called bar order. The bar order was entered in
23 December of 1972, and I think its date was late in January

1 of 1973 or early in February. And in any event, there
2 was filed claims, secured claims in behalf of the
3 consortium of banks aggregating about thirty-eight million,
4 a little more than that, and by other creditors, in round
5 figures, approximately twelve million five hundred
6 thousand dollars. In the twelve million five -- well,
7 I might say before I get to that, that the banks claimed
8 a secured position with respect to their claims and their
9 claims as filed were secured claims. The twelve million
10 five figure included priority claims, one of them being
11 the State of Ohio's claim of, oh, approximately a million
12 dollars, as I recall it, on some Ohio tax. New York had
13 assumed to offset the sales tax claim against some monies
14 owed by the State of New York, but generally speaking the
15 creditor position was that of the thirty-eight million
16 dollars that the banks claimed, twelve million five
17 hundred thousand in other claims, in the meantime we had
18 succeeded in having an income tax adjustment and repayment
19 by the Federal Government approaching three million
20 dollars, a little in excess of three million dollars,
21 which I might say was a God send at the time and enabled
22 us to carry on.. Well, we did the obvious, we sought to
23 process the claims, both the secured claims of the banks

1 and the claims comprehended by the twelve thousand five
2 hundred figure. We rejected various claims, made very
3 careful investigations with respect to the bona fides and
4 the validities of the various claims. We continued our
5 efforts to sell the modules, and to sell the other items
6 of inventory which were not minimal, I think we had some
7 five, six hundred thousand dollars, everything from
8 sticks of lumber to washbasins, toilet bowls, whatever,
9 to go in these modules. We had some art objects. The
10 executive offices were unusually well furnished, you
11 might say luxuriously furnished, and some electrical
12 equipment which I think we still have. And the time came
13 when we made a very thorough investigation, if I say so
14 myself, of the relationship of the banks to the picture.
15 I began to hear all sorts of rumors and I thought it
16 behooved me to inform myself concerning the validity of
17 the claim of the banks to a secured position, and while
18 I was in the midst of so-doing, and when I say "I",
19 assisted by counsel from -- particularly on the -- among
20 my people by Mr. Northrup, began to do what I could to
21 ascertain the genuineness of the bank's claim. While I
22 was doing that the Stirling brothers in the spring, as I
23 recall it, of 1973, who I might say had filed claims and

1 claimed a creditor's status as well as stockholders
2 status, filed through their counsel, Mr. Feldshuh in
3 New York, objections to the bank's claims, claims for
4 securities. I, of course, took cognizance of that. I
5 had a hearing in this courtroom after that where I caused
6 the presence of Mr. David Stirling, examined him at length,
7 concerning his allegations. They were mostly of a
8 conclusory nature. He presented, other than his word
9 on certain subjects, no legal or competent evidence of
10 most of his claims. If I were biased against the banks
11 I would say that his testimony was disappointing. I can
12 see it my duty, however, to pay the representative of all
13 creditors and stockholders and act only in the best
14 interest of the estate. I wanted not to make unfounded
15 or illconceived charges, so I continued my investigation.
16 You can readily see that the solution of the bank's
17 claim went to the heart of the whole trusteeship. Thirty-
18 eight million and some dollars out of a total of fifty
19 million, or thereabouts, was a very big portion. Without
20 going through the detail, or attempting to further
21 complicate the situation I thought there could be no
22 resolution, no end to the receivership unless we had a
23 substantive consolidation of the receivership -- or, the

1 trusteeship of Stirling Homex and that of certain of its
2 many subsidiaries. I go back in point of time to say
3 that while I was appointed trustee for Stirling Homex on
4 July the 13th, 1972, petitions were filed by five or six
5 of the subsidiaries of Stirling Homex, importantly for the
6 purpose of this discussion I mention two of them by name,
7 U. S. Shelter was one and Kabeth Properties, Inc., was
8 another. All these corporations, including Stirling
9 Homex were Delaware corporations. I was appointed on or
10 about July 21, 1972, the Trustee for -- in a Chapter X,
11 of course, for U. S. Shelter and for Kabeth, and the
12 three or four others. They are all mentioned by name if
13 anybody wants to refer to them, as I mentioned by name in
14 the various proceedings. Kabeth owned some real estate
15 in Clay, New York, U. S. Shelter was designed, as I
16 understand it, as a medium of financing purchasers of
17 modules from Stirling Homex. And now, at seemingly long
18 last I'll get to the genuineness of the bank's claim. In
19 the spring of 1971 the Chemical Bank of New York as the
20 lead bank organized this group of banks who are claimants
21 here into a group later termed by everybody a consortium
22 of banks, and in effect succeeded another group of banks
23 which had been loaning money to Stirling Homex. I might

1 have the date a little bit wrong, I think not. At any
2 rate, in the spring of '71, the Chemical Bank through
3 this consortium loaned substantial sums of money unsecured
4 to Stirling Homex, became intimately associated with the
5 affairs of Stirling Homex, counseled and advised in
6 respect to various matters, and in the month of July,
7 1971, Stirling Homex had an offering of twenty million
8 dollars of preferred stock. I might say a public offering,
9 through the underwriting of Merrill, Lynch. And as the
10 year of '71 drew to a close, with the money raised by the
11 public offering, with the advances, loans, if you please,
12 made by The Chemical group, this consortium, Stirling on
13 the face of things so far as the public was concerned was
14 thought to be in pretty good shape. The fact was its
15 financial situation was somewhat deteriorating and the
16 banks understandably were aware of the fact that their
17 loans were unsecured, set about to get them secured. Now,
18 that's a conclusion on my part, it isn't competent evidence
19 of the fact, but it's as I understand the story, and I
20 don't pretend in this rather lengthy narrative to swear
21 to something I don't know, and you can understand much
22 of this is on information to me. In any event, in January
23 of 1972, two agreements were entered into by Stirling

1 Homex on the one hand, the banks on the other, the
2 Chemical, the lead bank, one of those called a revolving
3 credit agreement under which there was to be a loan of
4 twenty-five -- not in excess of twenty-five million dollars.
5 The other had a simpler name, I've forgotten what it was.
6 called -- it was called a credit agreement. That was
7 entered into directly with U. S. Shelter. The revolving
8 credit agreement, if I might cut through a lot of language
9 and involvement, turned -- I guess the bank refers to it
10 as rolled over, an unsecured loan for a loan which was
11 secured, the security being, generally speaking, the
12 inventory and receivables, certain receivables of
13 Stirling Homex. It was a very formal document, very
14 thick document providing in some considerable detail for
15 compliance with the Uniform Commercial Code with respect
16 to the security. The other agreement, the credit
17 agreement, so-called as I remember it, seemed to be
18 intended to constitute U. S. Shelter as sort of an, oh,
19 General Motors Acceptance Corporation, and was to be the
20 financing medium. The security in the first instance was
21 the -- was certain of the receivables of Stirling Homex
22 and the more mature ones, as I recall it, and contemplated
23 a loan by Stirling -- by U. S. Shelter to Stirling on

1 receivables as they were created and at the same time
2 assignment by U. S. Shelter to the banks a loan by the
3 banks to U. S. Shelter and a transmittal of the funds
4 from U. S. Shelter back to Stirling Homex. It was a
5 Mechanics', somewhat conventional character for people
6 who factor or deal with their receivables in that way.
7 The important fact for me as the Trustee trying to make
8 up my mind as to whether the arrangement was valid in
9 its conception and throughout, was the fact that the
10 money as I was informed by the accountants and others,
11 you see I had to rely heavily on my accountants, I wasn't
12 there when these loans were made, the money derived from
13 both loans, both transactions, that is the revolving
14 agreement and the credit agreement, was used to pay off,
15 roll over, as they say in quotes, their heretofore
16 existing unsecured loans. Oh, I think some six hundred
17 thousand dollars -- a six hundred thousand dollar
18 reduction of the unsecured loans was accomplished, and I
19 think in March a million dollars was -- of new money
20 might have been received, was received, but in effect
21 there was no new money. It was a change from an
22 unsecured to a secured position. Now, the contract, that
23 is both of these agreements were claimed and probably

1 were executed sometime in January. They recite -- I
2 think that they are made as of January 24th, 1972. I
3 assume here, Your Honor, this might be a good point to
4 offer them in evidence, if they are not, I assume this
5 is going to be a hearing as referenced to Exhibits as
6 part of the record, but if they are here --

7 MR. JOHNSON:

I have here the revolving credit
8 agreement with the security agreement
9 attached and entered into as of
10 January 24th between Stirling Homex
11 Corporation and Chemical Bank as
12 agent for the others. This was
13 executed in counterpart by the
14 several banks.

15 THE COURT:

All right. Do you want to mark that,
16 Mr. Kane, as Exhibit No. 1 and we will
17 receive it unless there is strong
18 objection to their reception?

19
20 (Whereupon, Exhibit No. 1 was then
21 received and marked in evidence.)
22
23

1 THE WITNESS:

They do recite, do they not, Mr.
2 Johnson, they are made as of
3 January 24, '72?
4

5 BY MR. JOHNSON:

6 Q. Yes, they do.

7 A. Well, our investigation developed the fact, as one
8 might expect, that the mechanics involved sending
9 copies of these agreements, that is sending on the
10 part of the chemical, the participating banks, and
11 getting them back and getting all the documentation
12 necessary for compliance with the Uniform Commercial
13 Code, would be somewhat time consuming, and I always
14 felt there was -- this is, if you'll pardon me, Mr.
15 Goodman, as just my notion that in the nature of things
16 days and weeks would pass. I don't know that the
17 evidence supports me in that respect. We had a very
18 hard time assailing that, the proposition that they
19 were not timely filed. By "they", I mean the documents
20 supporting the security. Well, to go along, our investi-
21 gation then showed that almost from the beginning, if
22 not from the very beginning, Sterling Homex was in
23 default of the loan agreements. The revolving credit

C0021

1 agreement had many of the conventional items of boiler-
2 plate. There was one that was tailored to the Homex
3 picture, and that was a schedule of completed modules
4 which should be adhered to, that there couldn't be
5 more than so many, I don't know whether nine thousand
6 a certain date, seven thousand five hundred another
7 date, sixty-five hundred another date. And as
8 April of '72 came along, Stirling Homex was in default,
9 claimed default, as I look at it with the benefit of
10 hindsight with the documents and a very important
11 matter was developing. Here Stirling Homex had sold
12 twenty million dollars of preferred stock to the public
13 in July of 1971, could have been the first week or two
14 of August, the fiscal year of Stirling Homex expires
15 on the 31st of July, and its stock had been widely
16 sold to the public through Merrill, Lynch, and a
17 dividend was coming due, I think, on April 15th, 1972.
18 Could have been April 25th. I think April 15th.
19 And the loan agreement had provided that among other
20 things in what I call the boilerplate, oh, that they
21 had to maintain a certain net worth, a certain working
22 capital standard and could not pay a dividend without
23 the consent of the bank. If it was in default under any

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1 of these material provisions, and it was, Sterling Homex
2 was in default in the fact that it had more modules
3 on hand than the minimum prescribed in the agreement
4 for that time, and, of course, Sterling wanted to pay
5 the dividend. It was then entered into between Stirling
6 and the banks a further agreement, I think sometimes
7 referred to as a letter agreement. That agreement
8 provided, among other things, that the interest rate
9 which had been one and a half above prime in the one
10 instance and a little more than that in the other would
11 be raised. The usual experience of bankers, I suppose,
12 is to -- is obtaining any sort of a concession, and it
13 also provided that Stirling -- when I say "Stirling",
14 I mean the company, Homex, sometimes I use the other
15 part of the two names. Concerning that, Stirling Homex
16 would cause the Stirlings to deposit as additional
17 security for the payment of the loan any unencumbered,
18 unpledged stock which they might own personally. It
19 provided that Stirling Homex would guarantee the Shelter
20 loan, the loan by U. S. Shelter. It was intended to
21 upgrade, enhance the security for the then existing loan.
22 The banks gave consent to the payment of this dividend,
23 the dividend was paid, deterioration in the affairs of

00023

1 Stirling continued. Modules were, as you might say,
2 piling up, being manufactured, even without contract for
3 their purchase. Cash was being drained, and by June
4 and July a crises was -- was not only developing but
5 was at hand. Then occurs, or occurred a series of events
6 as to which there is great controversy, an unresolved
7 controversy. I think the Stirlings generally claimed
8 that the banks insisted that they resign. Along with
9 that, Mr. Yanowitch, whom I haven't mentioned, who was
10 an officer, and that officers of the banks choosing
11 take their place. The banks stoutly deny that, as
12 Stirling's asserted. Who is to say? In any event,
13 basically the Stirlings were claiming that throughout
14 this period a request of the bank for changes in manage-
15 ment, for an enhancement of the collateral were accom-
16 panied by promises of additional financing of which was
17 not forthcoming. The banks deny that. Question of fact
18 involved. The time came on July 11, '72, when the
19 banks called the loans, there's circumstantial evidence,
20 the last thing I want to do at this hearing is to open
21 old sores, but I allude to the contentions of the parties
22 so that your Honor can realize the nature of the contro-
23 versy, the difficulties in resolving it, and the reasons

5.

00024

1 for the settlement which we ask you to approve. Broadly,
2 there is circumstantial evidence and some direct evidence
3 to justify a claim or I wouldn't have made it, that the
4 banks were aware, fully aware of the deteriorating
5 financial condition of Stirling and played along with
6 Stirling, lulling Stirling into the belief that more
7 financing might be coming, would be coming, if you please,
8 if Stirling complied with their requests from time to
9 time, and that the banks were playing a game designed
10 to keep the company alive in their own interests until
11 four months from the date of the lodging of the last of
12 the security papers had elapsed. On the other hand,
13 there is no question but what the banks had loaned up-
14 wards of thirty-eight million dollars. There's no
15 question but what the loan agreements provided for
16 security. There is no question but what certain, if
17 not all of the documentation required to be filed was
18 filed sooner or later. But in any event, I filed
19 objections to the banks claims so far as the security
20 is concerned. I forget the date of my filing, I don't
21 know that its too important. But, as you might expect,
22 with thirty-eight million dollars or more at stake,
23 the banks were not going to take my charges lying down,

6.

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1 and were not going to see a security which they thought
2 had been carefully protected successfully contested.
3 And there then started very vigorous litigation. I
4 might better say litigation very vigorously pursued on
5 both sides. The banks, if I may, had and does have
6 very competent counsel, experienced counsel, and I was
7 met with discovery of great proportion. I'm not sure
8 I could have performed any of the functions of a Trustee
9 had I wanted to litigate this thing to the end. Every
10 day I was getting a new set of interrogatories, I was
11 functioning with a very reduced staff and, of course,
12 I was conducting through my counsel and others discovery
13 in support of my position. I think we went through
14 the files of each of the banks and that's no small
15 undertaking with a penchant of bank officers to write
16 memorandums back and forth, you can see or realize that
17 there was a tremendous volume which had to be read,
18 understood and associated with other things of its
19 kind to piece out the significance. Well, hand in hand
20 with this, is something very important, and its involved
21 in the approval of this agreement. We had moved -- I
22 had moved counsel for a substantive consolidation of
23 these Trusteeships, or more accurately, perhaps of the

00026

7.

1 proceedings affecting the subsidiaries, particularly
2 U. S. Shelter and Kabeth. The banks had objected to
3 substantive consolidation. They were the only ones
4 who objected, although there was a mongrel document
5 filed by the bonding company, stating in substance that
6 they -- it reserved the right to object. I might say
7 in passing I don't know how one reserves the right
8 adinfinitum to object. I don't charge that they acted
9 in other than good faith, but I regarded the banks as
10 the only people who were objecting. I regard them now
11 as the only people with standing to object. If such
12 they had. One of the great benefits to this estate
13 which flows from the agreement is the withdrawal of the
14 banks objections to the substantive consolidation. I
15 suppose in a chronology better organized than this
16 seems to be in my mind, I would have alluded to the
17 negotiations for the agreement before I started dis-
18 cussing the agreement. In the midst of the discovery and
19 at a time when we had one of our witnesses actually
20 present in the office of counsel for the banks, ready
21 for his deposition, as so often happens, and fortuitously
22 happens, we began serious discussions of a possible
23 settlement of the controversy which is consuming all of

8.

00027

1 us. And those negotiations were long, they were hard,
2 they were difficult. You can readily see that with nine
3 banks and nine sets of counsel for banks and goodness
4 knows how many second guessing bank executives how
5 difficult, time consuming negotiations would be. Even
6 after Mr. Goodman who is lead counsel for the banks
7 with whom my negotiations took place and who made the
8 deal with me, had reached agreement with me, our back
9 and forth through the medium of drafts with respect
10 to language, sentence structure and so forth, was
11 considerable. Now, in the agreement, its before you,
12 it speaks for itself, I can't add to it or detract from
13 it, I can explain it as I understand it. Its compara-
14 tively simple in the light of the complicated situation
15 which it was intended to resolve. Well, briefly stated,
16 it, as you will see, do see, has a few historical
17 references and then comes to grips with what is agreed
18 upon. Now, the net result, the bottom, as they've all
19 come to say, is that the banks in the last analysis,
20 accept a payout on their claims, their respective
21 claims, equal to what they would have received had they
22 been unsecured creditors. With claims filed, as I have
23 stated, and as claims in the amounts that I have stated,

1 plus one or two comparatively small payments for services
2 to which we would probably have been entitled to anyway,
3 such as administrative services that kept the -- I was
4 going to say confounded transfer agent going for a while
5 after the trusteeship, being some lack of authority as
6 to my authority to discontinue it, we discontinued it
7 when we ran out of stock certificates. I wasn't going
8 to subject the estate to the cost of buying new
9 certificates, stock certificates when I knew the stock
10 had no value. By that as it may, that's a twenty-four
11 or twenty-five thousand dollar item. I think there's
12 a -- one or two other small items like that, but
13 basically the banks will take, under this agreement,
14 what they would have received as unsecured creditors,
15 provided there are no additional claims filed and allowed
16 in certain prescribed amounts, if I make myself clear.
17 I might say that to use the words of Art, it wasn't
18 within the contemplation of the parties, certainly not
19 on my part, that any additional claims could be filed
20 and allowed. The bar order was entered in '73, late
21 January or early February, and its in '76, I can't
22 foresee that there can be additional claims unless
23 perhaps some stray hardship claim or something should

10.

00029

1 eventuate. In addition to, I won't say relegating
2 themselves to a role of an unsecured creditor, they
3 relegate themselves to an ultimate payment equivalent
4 to what they would get as an unsecured creditor, except
5 for the circumstances I mentioned. They are, however,
6 to receive, and the agreement would not be acceptable
7 to them as you can readily understand, unless there was
8 a quid pro quo of some sort. They weren't about to
9 lie down, they weren't about to surrender a secured
10 position with respect to a thirty-eight million dollar
11 claim without some consideration of substance going
12 their way. So, what the agreement provides is that
13 upon the approval becoming final, final in the sense
14 that it isn't -- the decree of approval or order of
15 approval is not subject to review either by appeal
16 or applications for rehearing, something to that effect,
17 that it means what it says and it becomes final. That
18 is contemplated to be an event which would take place
19 as quickly as possible. The agreement is dated
20 March 31 -- no, April -- March 31, 1976, and we are
21 required to get approval in the first instance, what is
22 termed by the agreement, the approval order, within sixty
23 days thereafter. The bank is putting the pressure on us

11.

00030

1 to get this done quickly for a reason which I will
2 mention and shall become obvious in just a moment. And
3 to get the order finally effective within a certain
4 number of days thereafter and the agreement talks in
5 terms of days and not in terms of months. Now, in return
6 for this agreement they will receive what they would
7 have received if they were unsecured creditors, what
8 they would have received if we won the case. They are
9 asking for and receive under the agreement a payment
10 of seven million dollars in the aggregate on account
11 of their claims. That is substantially the only considera-
12 tion which they do receive, but it is a value to them,
13 and as I say, represents basically the consideration
14 which they are to receive under the agreement. Now,
15 they agree -- I keep saying "they", I'm talking of the
16 consortium of banks, they agreed to withdraw their
17 objections to our motion, our application for substantive
18 consolidation which is, as you know, a motion contemplat-
19 ing -- an application contemplated by the statute, and
20 which is now pending before his Honor Judge Burke. Now,
21 I conceive that to be a very important benefit to the
22 trust estate. I shall not discuss it at unseemly
23 length, but both of these corporations, U. S. Shelter,

Kabath Properties, were in effect alter egos of Stirling Homex, organized by Stirling Homex for the purpose of accomplishing certain specific results. I've discussed the U. S. Shelter, I may be slightly in error, I don't know that Homex organized Kabath, I -- Kabath may have the facade of having been organized by someone else, but acquired by Stirling Homex. In any event, Stirling Homex at all times pertinent was the sole owner of all of the issued and outstanding capital stock of U. S. Shelter and Kabath. Kabath owns some real property in Clay, New York. We have a feeling that its worth somewhere in the vicinity of Nineteen hundred, maybe Two million dollars, but where did Kabath get the money to buy it? It was furnished by Stirling Homex and there is a complicated intercompany account between Kabath and Stirling Homex, and there is filed against Kabath the million dollar claim or more of the State of Ohio, and there is filed against Kabath the bonding company's claim of some four or five million dollars. It, in my judgment, my very considered judgment, would not have advantaged anybody, any creditor to oppose successfully the sought for substantive consolidation, but let me say that if it were successfully opposed and did not

13.

00032

1 become a fait accompli then I see no end to this
2 unfortunate trusteeship. To litigate between Kabeth
3 and Stirling Homex the balance of their account would be
4 a horrendous undertaking. In the first place I, as a
5 trustee of Kabeth, might under those circumstances have
6 to file a claim against the trustee of Stirling Homex.
7 Maybe I as the trustee of Stirling Homex ought to file
8 a claim against Kabeth. It's a conflict of interest which
9 in other circumstances would be material, if the accounts
10 didn't wash out, as I have informed them, and after
11 considerable investigation believe that they do, but
12 to litigate that question and have perhaps a different
13 trustee appointed for Kabeth at this late stage, or what
14 I hope is a late stage of this trusteeship, and then
15 seek to unravel the relationships between Kabeth and
16 Stirling Homex, I would think would preempt some con-
17 siderable time of this Court and would exhaust a sub-
18 stantial part of the money that I hope is available for
19 distribution of dividend -- liquidated dividend credi-
20 tors. Withdrawal of the banks objections to the sub-
21 stantive consolidation is an important element of
22 value, in my judgment to the trust estate of Stirling
23 Homex and to the trust estate of Kabeth and the others.

14.

00033

1 Now, I think I have fairly outlined the contract, I
2 want to stress speaking here extemporaneously without
3 notes that it makes it very difficult to mention every-
4 thing that should be mentioned, but the contract is
5 before the court, its been before every party in interest,
6 presumably has been very carefully examined by many
7 people. I think I might say that when -- I did say
8 before that we come out with the same payoff, or that
9 the banks do, that they would have come out, if they
10 were general unsecured creditors, and then I added some-
11 what gratuitously, there were circumstances if we won
12 the case and/or objections we asked that the bank be
13 reduced to the role of an unsecured creditor, that's what
14 I had in mind when I said they come out with the same
15 payout. I overlooked, and inadvertently so, for good
16 measure we did throw into the objection the request that
17 the banks claim be subordinated to the other unsecured
18 creditors, confession is good for the soul, I might say
19 that's a very dubious request on our part, its perhaps
20 a litigating lawyer's distemper to go for the extreme,
21 but I think that no one has taken us too seriously with
22 that request and that we are getting if not everything
23 that we requested, everything that we could have reason-

15.

00034

ably requested in the circumstances. Now, I think your Honor should know the status of my accounts, the status of the trusteeship and the predictions that I can reasonably make. Certainly Your Honor would not approve a contract, nor would I ask you to, which provided for a receipt on the part of the banks of all the money at hand. That would be improvident and extreme. I now have, and this is a figure that I could give from memory, twelve million four hundred and thirty-five thousand five hundred and twenty-nine dollars and forty cents in cash. In large measure, I think all but some around two hundred thousand dollars of it represented by Certificates of Deposit in our good friend, the Marine Trust Company, as I believe its now know, the other two hundred or hundred and ninety-nine, whatever it is, is on deposit in the Avon Branch or one or two other local branches of the Marine. I think sufficiently guaranteed by the Federal Insurance and the Marine for the big deposit, or for the aggregate of the Certificates of Deposit, has deposited security with the Federal Reserve and has complied with the Statute as I am advised by my counsel. So, to recapitulate, I have the twelve million four thirty-five, five

16.

1 twenty-nine forty, and I would indicate to your Honor
2 through the medium of this Exhibit what I hope and
3 reasonably believe will be the --

4 THE COURT: Mark that as Exhibit No. 2, Mr.
5 Kane,

6
7 (Whereupon, Exhibit No. 2 was
8 then received and marked in evidence.)

9
10 THE COURT: Is there any objection, Mr. Goodman?

11 MR. GOODMAN: No, Your Honor.

12 THE COURT: All right, Exhibit No. 2 is
13 received.

14
15 BY MR. JOHNSON:

16 Q. Please continue.

17 A. And the Exhibit I prepared says "estimated amount of
18 principal at conclusion". Now, the first item, "Cash
19 as of April 30, 1976" twelve million four hundred
20 thirty-five thousand five hundred twenty-nine dollars,
21 "Assets to be liquidated", this says eleven hundred
22 and thirty-six modules, well, its dated May 6th, and
23 I'm happy to report that that figure is not over a

17.

1 thousand modules, maybe less as of today. I have put
2 the figure seven hundred dollars per module as an
3 estimate, so you take the eleven thirty-six, take it
4 out of there, there's seven hundred ninety-five thousand
5 two hundred. Raw materials, that's the lumber and
6 the odds and ends of things to make modules, a hundred
7 and thirty-two thousand. Equipment, trailers, we have
8 a hundred and seventy trailers at seven hundred and
9 fifty dollars, that's one hundred and twenty-seven
10 thousand five hundred dollars. Those are not only
11 useful, but they are essential. We not only have to
12 sell the modules but we have to see that the purchaser
13 removes them as promptly as possible from our staging
14 areas or they'll be there forever. We can't sell the
15 building, plant 1, as we call it, until we get the
16 modules out of there, or we can't give a purchaser
17 possession. Next, "other", that's ninety-one thousand,
18 well, that's odds and ends of equipment. The amounts
19 are solid, two hundred and eighteen thousand five
20 hundred dollars. Now, "real property (net return)"
21 that's after payment of any mortgages and so forth,
22 Kaboth and Homan, two million six hundred and ninety-
23 nine thousand five hundred and seventy, I could break

18.

1 those down but since Charlie Northrup and I are in the
2 business of trying to sell the real estate, I didn't
3 choose to disclose our appraisals on each of these
4 properties. If anybody is very insistent, anybody in
5 interest, I could give them a breakdown. "Condemnation
6 award", six hundred thousand dollars. That's net of
7 certain claims that are made against the award. The
8 state took part of the real estate in Clay for a Clover-
9 leaf in connection with a highway, and we have an award
10 from the Court of Claims as a sum substantially higher
11 than six hundred thousand dollars, but there's some
12 claims of creditors against that. So, to be conserva-
13 tive, although I'm challenging certain of those claims,
14 its in as six hundred thousand. "Furniture, fixtures,
15 photo and electronic equipment", one hundred and
16 fifty-seven thousand dollars. The electric equipment
17 means what it says, and does not include the publicized,
18 electronic eavesdropping equipment, that can only be
19 sold to eligible buyers and has been sold, I'm advised.
20 I think as a matter of operating policy the previous
21 management was interested in hearing what the employees
22 had to say from time to time. "Accounts receivable,
23 net of accounts payable", well, that includes the tools,

19.

1 the modules sold, not paid for, still we have some
2 expenses that just about wash that out. Those all add
3 up to four million eight hundred and two thousand two
4 hundred and seventy dollars. So, I predict, and
5 predictions make me think of the old proverb that all
6 prophecy is void, and make this under oath with caveats,
7 I suppose, but I reasonably expect and certainly hope
8 to have approximately seventeen million two hundred
9 thirty-seven thousand seven hundred and ninety-nine
10 dollars. Now, what does all this mean so far as this
11 agreement is concerned? Well, on an estimated net
12 estate of sixteen million dollars, depending on how
13 much the banks would -- had to contribute, if their
14 secured position was upheld towards the expenses of
15 the trusteeship, I can give you some figures. Apropos
16 of that last remark, the one thing that -- one other
17 thing that this agreement, if and when approved, obviates
18 is a most complicated, detailed accounting as to the
19 moneys spent to preserve the secured property and to
20 sell it, turn it into cash, and the other expenses of
21 the trusteeship. My last three years has been spent
22 trying to sell and deliver those modules, and as I argued
23 with the banks, and as they reasonably accepted part of

20.

1 my argument, the banks know that they would have to
2 make a contribution that is, that the security would have
3 to bear the cost of preserving it. But in any event,
4 if there's a sixteen million dollar net estate, that
5 is after administrative expenses and the banks received
6 an ultimate pay-out of eight million six or six million
7 six, then the general creditors, including the banks,
8 would receive somewhere around fourteen -- no, wait a
9 minute. No, let me talk in terms of percentages. If
10 the banks have a security interest, that's what it boils
11 down to, they have and didn't assume the role of a
12 general unsecured creditor, the unsecured creditors
13 would receive from sixteen to nineteen per cent of their
14 claims. If this agreement is approved, they will
15 receive somewhere around twenty-nine per cent on the
16 assumed basis of a net distribution of sixteen million.
17 Now, the benefits, I don't mean to extol them ad nauseam
18 but they are so substantial that I don't see how anybody
19 could question from the standpoint of the banks or from
20 the standpoint of the general unsecured creditor this
21 settlement or the agreement formalizing it. It will
22 without question, without question expedite the closing
23 of this otherwise all too long trusteeship. It will

21.

1 eliminate these costly items of expense, costly to
2 litigate, employ counsel, employ accountants, auditors,
3 if you please. You devote the time of the trustee,
4 and a considerable part of the time of my personnel.
5 The elimination of the expenses incident to a controversy
6 not over the validity of the banks claims alone, but over
7 the right or the desirability of the substantive
8 consolidation. Therefore, I would respectfully ask
9 your honor to approve the agreement.

10 THE COURT: May I ask one question, Mr. Raichle?

11 You've given us the total amount --

12 THE WITNESS: I beg your pardon, Your Honor?

13 THE COURT: You've given us the total amount
14 that you expect to receive, you've
15 given us the percentages which the
16 unsecured creditor would receive
17 without this compromise and with
18 the compromise, and I take it from
19 that that the security which the
20 banks are seeking did not cover
21 everything?

22 THE WITNESS: No, Your Honor. I should have made
23 that clear. It did not cover plant

1 No. 1, which is the main plant, and it didn't cover
2 certain real estate, oh, some in Jamestown, some in
3 Brockport, is it? Some in a place called -- what's
4 the name of that road? Columbia? What's the name
5 of that road where the other real estate -- I thought
6 there was one other place. These are small pieces
7 that I could give you the dollars and cents, it did
8 include a -- the security did include the capital stock
9 of Shelter and Kabeth. I might say this for informa-
10 tion's sake, your Honor, the question suggested to me
11 for -- I was going to say simplicity, that's not
12 appropriate to any phase of this, as a matter of
13 practice the proceeds from the sale of modules and the
14 proceeds from the sale of other items of inventory have
15 been deposited in so-called special accounts. Those
16 are the proceeds represented by the Certificates of
17 Deposit. Now, my free money, money I make on the
18 little operation of the -- of the trailers, represent-
19 ing them and so forth, is what I've used to kind of
20 support things, because I've never had an accounting
21 between the moneys in the special account and the
22 money, what I call the free money. It's far from
23 free, I had to work like the dickens to get it.

22.

1 THE COURT:

Al Mr. Johnson, do you
want put in now for the record
the banks claims?

4 MR. JOHNSON:

Yes. Before I do that, I would
like to ask Mr. Raichle to
discuss one subject very briefly.

8 BY MR. JOHNSON:

9 Q. Mr. Raichle, you did have conferences with representa-
10 tives of the Securities Exchange Commission relative
11 to this proposed settlement?

12 A. Yes, at which you were present, Mr. Northrup was
13 present and Mr. Goodbar.

14 Q. Would you briefly describe what occurred?

15 A. Yes. We made an appointment to see Mr. Marvin Jacobs,
16 who is the regional director in New York. We went to
17 see him about ten days ago, it seems to me, we spent
18 a couple of hours with him and not in as corroborative
19 and burdensome detail which I've inflicted on you, I
20 told him the story. He was more or less familiar with
21 it and the affairs of the trust estate, because the
22 S.E.C. is a party to this proceeding and exercises
23 supervisory powers. We communicate with them whenever we

24.

1 are selling something of any substantial value, and we
2 try to keep them informed as to all our doings.

3 Q. And he indicated generally that he had no objection to
4 the settlement?

5 A. He indicated clearly, I thought, that he thought this
6 settlement agreement was in the interest of everybody
7 and, therefore, had no objection.

8 MR. JOHNSON:

9 Fine, I would like to introduce
10 into evidence, Your Honor, the
11 separate files we have for each
12 of the banks in question. These
13 files contain in each case the
14 proof of claim and the trustee's
15 objections. In the case of the
16 first one, which I believe would
17 be Exhibit No. 3, there is the file
18 for the Chemical Bank, both
19 individually and as agent for the
20 others, and I would like to make
21 mention of the fact that the
22 security agreements and revolving
23 credit agreements with both Stirling
Homex Corporation and U. S. Shelter

25.

1 are incorporated in these papers, so that we will have
2 a complete set of the basic credit agreements in
3 Exhibit No. 3.

4 THE COURT: All right, fine.

5
6 (Whereupon, Exhibits Nos. 3 through
7 10 were then received and marked
8 for identification.)
9

10 MR. JOHNSON: If the Court please, trustee's
11 Exhibit No. 3, as I mentioned
12 before is the file containing the
13 claims of the Chemical Bank as
14 against both U. S. Shelter and
15 Stirling Homex Corporation, both
16 in their capacity as agent for the
17 consortium of banks and individually
18 and together with the trustee's
19 objection to their claims. Exhibit
20 No. 4 contains the proof of claim
21 filed by the First National Bank
22 of Chicago, together with the
23 trustee's objection thereto.

25.

1 Exhibit 5 is the same for the
2 Chase Bank. Exhibit No. 6 is the
3 same for the Marine Midland Bank-
4 Western. No. 7 is Lincoln First.
5 No. 8 is the Union Commerce Bank
6 of Ohio. No. 9 is the Union Planters
7 Bank, National Bank of Memphis,
8 and Exhibit No. 10 is the First
9 National State Bank of New Jersey.
10 I should say parenthetically, if
11 I haven't mentioned it before, that
12 since the institution of these
13 proceedings the two Marine Banks
14 have now been merged into one holding
15 company which is known as the Marine
16 Midland Bank. I would introduce
17 these in evidence if there's no
18 objection.

19 THE COURT:

All right, they are received.

21 (Whereupon, Exhibits Nos. 3 through
22 10 for identification, were then
23 received and marked in evidence.)

1 THE COURT:

Now, do any of the other counsel
present here wish to ask any
questions of Mr. Raichle?

4 MR. GOODMAN:

No, Your Honor.

5 THE COURT:

As I understand, Mr. Johnson, there
have been no objections filed to
this compromise?

6 MR. JOHNSON:

As of the opening of Court this
morning, counsel for the trustee
and the trustee, neither have
received any objection from any
party in interest.

13 THE COURT:

All right. It has been proposed
in a letter from Mr. Johnson to
Judge Burke that I would submit
my recommendations to Judge
Burke within a relatively short
period of time and that the people
who appear here today and who wish
to have copies of the approval
or disapproval, whatever recommenda-
tion I make to Judge Burke, will
be given notice of a hearing to

1 affirm or otherwise act upon the
2 report that I am going to make to
3 Judge Burke and you will be given
4 ten days notice. So, for that
5 reason I think it is important
6 if you wish to receive notice that
7 you appear or note your appearance
8 with Mr. Kane. Now, I'm going to
9 reserve on this matter, I would
10 like to see Mr. Johnson and Mr.
11 Reichle in chambers. Mr. Goodman,
12 if you care to come, you are welcome
13 to. All right? We will stand
14 adjourned.

15 * * * *

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
BANKRUPTCY COURT

A 108

In the Matter of

STIRLING HOMEX CORPORATION,

Debtor

FINDINGS OF FACT
AND RECOMMENDATION

Re: Claims of:

The Chemical Bank, individually and as agent.

Chase Manhattan Bank, N.A.

Marine Midland Bank, as Successor to
Marine Midland Bank-Western and
Marine Midland Bank-Rochester

In Proceedings for
Reorganization of
a Corporation Under
Chapter X of the
Bankruptcy Act

Lincoln First Bank of Rochester
formerly known as Lincoln Rochester
Trust Company

NO. BK-72-1399

First National Bank of Chicago

The Union Commerce Bank

The First National State Bank
of New Jersey

Union Planters National Bank
of Memphis

In the Matter of

U. S. SHELTER CORPORATION,

Debtor.

NO. BK-72-1464

Re: Claim of The Chemical Bank

The objections to Claim filed by Frank G. Raichle, as
Trustee in Reorganization of Stirling Homex Corporation and U.S.
Shelter Corporation, to the allowance of : the claim of Chemical
Bank, filed on or about February 8, 1973; the claims of Lincoln
First Bank of Rochester and Union Planters National Bank of
Memphis, filed on or about the 13th day of February, 1973; the

claim of First National Bank of Chicago, filed on or about the 15th day of February, 1973; the claims of Chase Manhattan Bank, N.A., Marine Midland Bank-Western, Marine Midland Bank-Rochester, Union Commerce Bank, and First National State Bank of New Jersey, filed on or about the 16th day of February, 1973; the claim of Chemical Bank against U.S. Shelter Corporation, a subsidiary of Stirling Homex Corporation, filed on or about February 18, 1973, which claims in the aggregate total \$38,073,167.88, having been referred to this Court by Orders of the Federal District Court, Western District of New York, dated May 15 and May 20, 1975, which Orders directed this Court to "hear and report . . . on the same with . . . findings and recommendations"; and this Court by Order dated April 5, 1976, having fixed May 10, 1976 for a hearing upon the application of the Trustee to settle and/or otherwise compromise the aforementioned claims and objections upon the terms and conditions outlined in an Agreement executed by the Trustee and the claimant banks as of March 31, 1976; and due notice having been given to creditors, shareholders and the Securities and Exchange Commission; and no objections having been filed or noted by any party to this proceeding; and the Court having given due consideration thereto, makes the following findings of fact and recommendations:

FINDINGS OF FACT

1. Early in 1972, Stirling Homex Corporation entered into a Revolving Credit Agreement, Security Agreement and Assignment, and Pledge Agreement, all dated as of January 24, 1972 with Chemical Bank, individually and as agent for the Chase

Manhattan Bank, N.A., First National Bank of Chicago, Marine Midland Bank-Western, Marine Midland Bank-Rochester, Lincoln Rochester Trust Company, Union Commerce Bank, First National State Bank of New Jersey, and Union Planters National Bank of Memphis. (Hereinafter referred to as "Banks".)

2. That early in 1972, U.S. Shelter Corporation entered into a Credit Agreement, dated as of January 24, 1972, with Chemical Bank, individually and as agent for all of said Banks.

3. UCC-1's evidencing these agreements were filed in the proper New York State offices more than four months prior to the time the subject debtors filed their petitions for reorganization under Chapter X of the Bankruptcy Act.

4. Pursuant to said credit arrangements and agreements, the aforementioned banks purported to take a security interest in all goods owned by Stirling Homex Corporation and held for sale or lease in the ordinary course of its business, or furnished or to be furnished by Stirling Homex Corporation under contracts or service, including raw materials, work in progress or materials, and all goods of like kind or type. The security arrangement also purported to give a security interest in all invoices, contracts, claims, instruments, leases, agreements on account, whether then existing or thereafter arising, evidencing or representing indebtedness due or to become due to Stirling Homex Corporation for its own account on account of goods sold or leased or to be sold or leased by Homex, or services rendered or to be rendered by Homex. Also, pursuant to said credit arrangements, the aforementioned Banks continued existing loans to U.S. Shelter Corporation and Stirling Homex Corporation of approximately \$38,000,000.

5. On July 12, 1972, Stirling Homex Corporation filed a petition for reorganization pursuant to Chapter X of the Bankruptcy Act, and on July 21, 1972, U.S. Shelter Corporation filed a petition seeking similar relief.

6. On the 13th day of July, 1972 and the 21st day of July, 1972, Frank G. Raichle was appointed Trustee of said corporations, respectively.

7. On the 11th day of December, 1972, the Federal District Court, Western District of New York, issued an Order which directed all parties claiming to be creditors to file claims with the Trustee by February 19, 1973.

8. Pursuant to said Order, numerous claimants filed claims against the debtor corporations, which aggregated in the total approximately \$50,500,000. Of said total sum, \$38,073,167.88 represented claims filed by said Banks, which claimed a secured interest in certain of the assets of the debtors. The remaining \$12,500,000 in claims represent all the other creditors.

9. The banks essentially were claiming a security interest in the inventory and receivables. (See attached Exhibits 3 - 10) These constitute the most valuable assets of the debtor.

10. On or about April 18, 1973, David and William Stirling, former employees and officers of Stirling Homex Corporation, filed objections to the claims of the Banks, which objections were subsequently dismissed by Order of this Court on or about the 28th day of July, 1973, on the ground that said objections had been superseded by the Trustee's objections filed to the claims of the Banks.

11. On or about May 6, 1975, the Trustee filed objections to the claims of the Banks. His objections which are contained in Exhibits 3 - 10, in summary, were that the agreements were obtained within one year of adjudication through fraud under both state and federal law and that the perfection of security was completed within four months of adjudication for a pastdue consideration while the debtors were in financial straits and hence was a void or voidable preference.

12. During the Trustee's pre-hearing discovery proceedings on the claims and the objections filed thereto, negotiations occurred between the Trustee and the Banks seeking a compromise of the claims and objections, which negotiations have resulted in the Trustee and the said Banks executing an Agreement dated as of March 31, 1976.

13. The agreement which was part of the notice sent for this hearing, requires the Banks to waive their security if any, in the assets of the debtors and their subsidiary corporations and to participate in distribution from the estate in the same proportion as other general unsecured creditors. The agreement also calls for the Banks to surrender their objection to a consolidation of the Chapter X cases of Stirling Homex Corporation and all of its subsidiary corporations in accordance with a petition filed by Frank G. Raichle, the Trustee of those various corporations, on or about June 10, 1975. In return for the considerations which the Banks have made, the Trustee will make an immediate interim payment on account, to the Banks, of \$7,000,000.

14. The Trustee currently has \$12,435,529 on deposit

with Marine Midland Bank. He expects by the end of his stewardship to have some \$17,237,799 for distribution and payment of administrative expenses.

15. The Trustee by Petition dated April 5, 1976 made application to this Court for a hearing seeking approval of the aforementioned Agreement.

16. This Court, by Order of April 5, 1976, fixed May 10, 1976 for a hearing upon said application and directed the time and manner of notice to interested parties pursuant to Rule 10-209.

17. Proper service of the petition of Frank G. Raichle dated April 5, 1976, my Order of April 5, 1976 and a copy of the agreement has been made upon all parties directed by this Court to be notified and these included creditors and stockholders of record.

18. The Securities and Exchange Commission has been advised of the nature and extent of the proposed agreement, and has offered no objection to its approval or implementation.

19. On May 10, 1976, the return date of the hearing set in my Order of April 5, 1976, a list was made of all the people appearing. Frank G. Raichle, the Trustee, was sworn and testified for two hours. No creditors or stockholders filed written objections to the proposed settlement or compromise proposed. No one who appeared before me on May 10, 1976 offered any objection to the proposed settlement or compromise.

20. The compromise proposed by the agreement will increase the amount to be received by the unsecured creditors on their claims from a maximum of 19% and a minimum of 16% to an approximate dividend of 29%.

21. Since the Banks will in essence receive only what they would receive as an unsecured creditor, the Trustee has

22. This agreement, when effective, will require the Banks to withdraw their opposition to the Trustee's pending application for consolidation of Stirling Homex Corporation and its subsidiary corporations. This is important to the Trustee because it will enable him to consolidate these Chapter X proceedings and allow him to avoid litigation which in his words would be a "horrendous undertaking".

23. The compromise will expedite the Trustee's administration of all of the debtors' estates, will relieve the Trustee of the financial and administrative burden of preparing separate and independent financial accountings and analyses of the various debtor corporations, and will otherwise permit a joint administration and accounting of various debtors' estates.

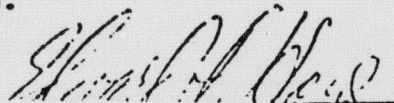
24. This Agreement will minimize the additional administrative expenses required to be incurred by the Trustee in otherwise administering the debtors' estates.

25. The compromise will avoid the necessity of litigating the apportionment of administrative expenses between secured and unsecured creditors.

26. The compromise will expedite the administration and the final closing of these estates.

RECOMMENDATION

Therefore, it is recommended that the Trustee, Frank G. Raichle, be permitted to compromise and settle his objections to the claims of the Banks in accordance with the agreement dated March 31, 1976 and executed by him and the Banks and that the Trustee be authorized and directed to implement the agreement in accordance with its terms and conditions.



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

A 115

In the Matter of

STIRLING HOMEX CORPORATION,

Debtor.

Re: Claims Of:

The Chemical Bank, individually
and as agent.

Chase Manhattan Bank, N.A.

Marine Midland Bank, as Successor
to Marine Midland Bank-Western
and Marine Midland Bank-Rochester

Lincoln First Bank of Rochester
formerly known as Lincoln Rochester
Trust Company

First National Bank of Chicago

The Union Commerce Bank

The First National State Bank of
New Jersey

Union Planters National Bank of
Memphis

ORDER FIXING HEARING
AND DIRECTING SERVICE

In Proceedings for
Reorganization of a
Corporation Under
Chapter X of the
Bankruptcy Act.

No. BK-72-1399

In the Matter of

U. S. SHELTER CORPORATION,

Debtor.

Re: Claim of The Chemical Bank

No. BK-72-1464

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

In the Matter of STIRLING HOMEX
CORPORATION, Debtor.

In Proceedings for the
Reorganization of a
Corporation

BK-72-1399

In the Matter of U. S. SHELTER
CORPORATION, Debtor.

BK-72-1464

In the Matter of U. S. HOME MANAGEMENT
SERVICE, INC., Debtor.

BK-72-1496

In the Matter of PROGRESSIVE HOUSING
CORPORATION, Debtor.

BK-72-1497

In the Matter of CLAY DEVELOPMENT
CORPORATION, Debtor.

BK-72-1498

In the Matter of KABETH PROPERTIES,
INC., Debtor.

BK-72-1499

ORDER FIXING HEARING
AND DIRECTING SERVICE

Upon the petition of Frank G. Raichle, Trustee in Reorganization of Stirling Homex Corporation, and of U. S. Shelter Corporation, the above-named debtors, dated the 17th day of May, 1976, requesting this Court to confirm the Findings and Recommendations filed by the Honorable Edward D. Hayes on the 14th day of May, 1976, and

Upon the Affidavit of Thomas W. Petrillo, Esq., a principal of Johnson, Reif and Mullan, P.C., attorneys for the Trustee, requesting

this Court to reschedule hearing upon the Trustee's application dated June 10, 1975, seeking to substantively consolidate the assets and liabilities of Stirling Homex Corporation and its subsidiary corporations, and sufficient reason appearing therefor, it is

ORDERED, that June 14, 1976, at 2:00 P.M., United States Courthouse, 100 State Street, Rochester, New York 14614, be, and hereby is, fixed as the time and place of a hearing upon the application of the Trustee requesting this Court to confirm Findings and Recommendations filed by the Honorable Edward D. Hayes on the 14th day of May, 1976, which recommended approval of the Agreement entered into by the Trustee and the creditor banks as of the 31st day of March, 1976, and it is further

ORDERED, that June 14, 1976, at 2:00 P.M., United States Courthouse, 100 State Street, Rochester, New York 14614, be, and hereby is, fixed as the time and place for a rehearing upon the application of the Trustee seeking to substantively consolidate the assets and liabilities of Stirling Homex Corporation, U. S. Shelter Corporation, U. S. Home Management Service, Inc., Progressive Housing Corporation, Clay Development Corporation and Kabeth Properties, Inc., and it is further

ORDERED, that it shall be deemed sufficient notice of the proceedings to be taken upon these applications, if a copy of this Order and of the Petitions upon which the same is made, are served by ordinary mail on or before , 1976 as follows:

1. Upon all parties who appeared at the hearing on the 10th day of May, 1976 before the Bankruptcy Court, and noted their appearance on the record of that proceeding, to wit:

- a) ABC Letter Service
By William Pepper
1500 Brighton-Henrietta Town Line Road
- b) Daniel Blake
May Road
Conesus, New York
- c) Modex Building Supply Co., Inc.
By Walter R. Clement
90 Lee Road
P.O. Box 7823
Rochester, New York 14606

d) The creditor banks hereinbefore recited

2. Upon all parties who appeared before this Court on the 28th day of July, 1975, upon the Trustee's application seeking to substantively consolidate the assets and liabilities of the corporations noted above, and all parties who filed written notice of opposition thereto, to wit:

- a) The creditor banks hereinbefore recited
- b) Clay Land Corporation

3. Upon the Securities and Exchange Commission, 26 Federal Plaza, New York, New York 10007; Attention: Marvin E. Jacob, Assistant Regional Administrator.

Dated: Rochester, New York
May , 1976.

/s/ Harold P. Burke
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

A 119

In the Matter of

STIRLING HOMEX CORPORATION,

Debtor.

Re: Claims of:

The Chemical Bank, individually and
as agent.

Chase Manhattan Bank, N.A.

Marine Midland Bank, as Successor
to Marine Midland Bank-Western
and Marine Midland Bank-Rochester

Lincoln First Bank of Rochester
formerly known as Lincoln Rochester
Trust Company

First National Bank of Chicago

The Union Commerce Bank

The First National State Bank of
New Jersey

Union Planters National Bank of
Memphis

In the Matter of

U. S. SHELTER CORPORATION,

Debtor.

Re: Claim of The Chemical Bank

PETITION

In Proceedings for
Reorganization of
a Corporation Under
Chapter X of the
Bankruptcy Act

No. BK-72-1399

No. BK-72-1464

TO: THE UNITED STATES DISTRICT COURT

Frank G. Raichle, Trustee in Reorganization of Stirling Homex
Corporation and U. S. Shelter Corporation, respectfully states that:

1. By Orders of this Court dated July 13, 1972 and July 21, 1972, he was appointed Trustee in Reorganization of Stirling Homex Corporation and U. S. Shelter Corporation, respectively.

2. On the 6th day of May, 1975, the Trustee filed the following objections: to the claim of Chemical Bank, filed on or about February 8, 1973; to the claims of Lincoln First Bank of Rochester and Union Planters National Bank of Memphis, filed on or about the 13th day of February, 1973; to the claim of First National Bank of Chicago, filed on or about the 15th day of February 1973; to the claims of Chase Manhattan Bank, N.A., Marine Midland Bank-Western, Marine Midland Bank-Rochester, Union Commerce Bank, and First National State Bank of New Jersey, filed on or about the 16th day of February, 1973; to the claim of Chemical Bank against U.S. Shelter Corporation, a subsidiary of Stirling Homex Corporation, which claim was filed on or about February 18, 1973.

3. This Court, by Orders of May 15 and May 20, 1975, respectively, referred to the Bankruptcy Court the objections interposed by Trustee to the claims filed by the above-noted banks, and directed that Court to "hear and report to this Court on the same with his findings and recommendations."

4. As set forth in a petition submitted to the Honorable Edward D. Hayes, Bankruptcy Judge, dated April 5, 1976, the Trustee proposed settlement and/or compromise of the claims of the banks noted above, and his objections filed thereto, upon the terms and conditions set forth in an Agreement attached hereto as Exhibit "A", which Agreement is subject to the approval of this Court.

5. Upon the petition of Frank G. Raichle, as Trustee in Reorganization of Stirling Homex Corporation and U. S. Shelter Corporation, an Order was issued on the 5th day of April, 1976, by the Hon. Edward D. Hayes, directing that notice issue to all creditors and shareholders of Stirling Homex Corporation and U. S. Shelter Corporation, to the Securities and Exchange Commission, and to other interested parties, of a hearing to be held on the 10th day of May, 1976, upon the aforementioned application of the Trustee, which requested that the Bankruptcy Court hear and report upon the Trustee's objections, and the settlement Agreement, and issue findings and recommendations that said Agreement be approved.

6. A hearing was held on the 10th day of May, 1976, and no opposition was filed by any party to the application in question.

7. On the 14th day of May, 1976, the Honorable Edward D. Hayes issued and filed Findings and Recommendations to this Court, recommending approval of said Agreement. See attached Exhibit "B".

WHEREFORE, petitioner respectfully requests that an Order be issued fixing a time and place of a hearing before this Court upon this application of the Trustee to confirm and adopt the Findings and Recommendations, and such other and further relief as to this Court may seem just and proper.

Dated: Rochester, New York
May 17, 1976


Frank G. Raichle, Trustee

A 121 a

Exhibits A and B to foregoing
petition reproduced, respectively,
at A55 and A108, supra.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

In Proceedings for the
Reorganization of a
Corporation

In the Matter of STIRLING HOMEX
CORPORATION, Debtor,

BK-72-1399

In the Matter of U. S. SHELTER
CORPORATION, Debtor,

BK-72-1464

In the Matter of U.S. HOME MANAGEMENT
SERVICE, INC., Debtor,

BK-72-1496

In the Matter of PROGRESSIVE HOUSING
CORPORATION, Debtor.

BK-72-1497

In the Matter of CLAY DEVELOPMENT
CORPORATION, Debtor.

BK-72-1498

In the Matter of KABETH PROPERTIES,
INC., Debtor.

BK=72=1499

TO: The United States District Court

STATE OF NEW YORK)

) SS:

COUNTY OF MONROE)

THOMAS W. PETRILLO, being duly sworn, deposes and says that:

1. He is an attorney and a principal of Johnson, Reif and Mullan
P.C., attorneys for Frank G. Raichle, Trustee in Reorganization of the
corporations noted above.

As such, he is familiar with all of the records and proceedings
in these matters.

2. On or about the 16th day of June, 1975, an Order to Show Cause issued from this Court, upon the application of Frank G. Raichle, seeking to substantively consolidate the assets and liabilities of the six corporations noted above, and to declare the assets and liabilities to be the assets and liabilities of Stirling Homex Corporation.

The matter was returnable on the 14th day of July, 1975, and upon consent was adjourned to July 28, 1975, when the matter was heard by this Court.

3. Upon the return date, nine creditor banks of Stirling Homex Corporation and U. S. Shelter Corporation filed opposition to the Trustee's application, and requested that a hearing be fixed to take testimony upon the allegations in the Trustee's petition.

The matter was placed on the calendar of the Court for hearing, at a date to be later determined. No hearing has been held to date.

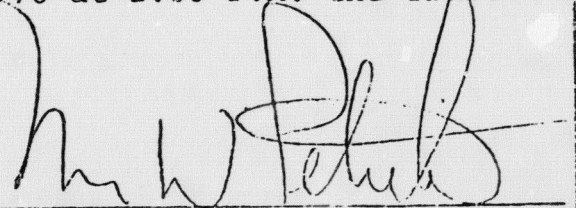
4. By petition submitted to this Court simultaneously with this affidavit, the Trustee seeks confirmation of Findings and Recommendations of the Honorable Edward D. Hayes, which recommends approval of the settlement of the claims filed by the nine creditor banks against Stirling Homex Corporation and U. S. Shelter Corporation, on terms and conditions set forth in an Agreement dated as of March 31, 1976.

5. Under the terms and conditions of said Agreement, the opposition filed by the creditor banks to substantive consolidation will be withdrawn, if this Court confirms said Findings and Recommendations.

6. Deponent believes that it would be in the best interest of the debtor estates to reschedule the matter of substantive consolidation for a rehearing by this Court on July 14, 1976 at 2:00 P.M., the date

fixed for a hearing upon the Trustee's confirmation application, at which time deponent believes that the substantive consolidation application could be disposed of.

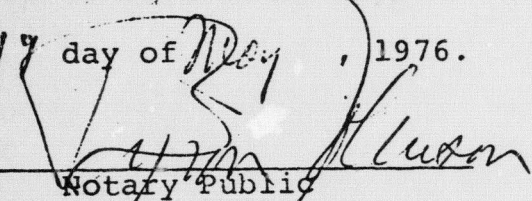
WHEREFORE, deponent respectfully requests this Court to reschedule upon its calendar for the 14th day of June, 1976 at 2:00 P.M. the Trustee's application for substantive consolidation..



THOMAS W. PETRILLO

Sworn to before me this

17 day of May, 1976.



Notary Public

BYRON JOHNSON
NOTARY PUBLIC, State of N. Y., Monroe County
My Commission Expires March 30, 1977

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NEW YORK

In the Matter

-of-

STIRLING HOMEX CORPORATION,

Debtor.

RE: Claims Of:

The Chemical Bank, individually
and as agent.

Chase Manhattan Bank, N.A.

Marine Midland Bank, as Successor
to Marine Midland Bank-Western
and Marine Midland Bank-Rochester

Lincoln First Bank of Rochester
formerly known as Lincoln Rochester
Trust Company

First National Bank of Chicago

The Union Commerce Bank

The First National State Bank of
New Jersey

Union Planters National Bank of
Memphis

In Proceedings for
Reorganization of a
Corporation Under
Chapter X of the
Bankruptcy Act.

No. BK-72-1399

In the Matter of:

U. S. SHELTER CORPORATION,

No. BK-72-1464

Debtor.

6/28/76
Re: Claim of the Chemical Bank

UNITED STATES DISTRICT
WESTERN DISTRICT OF NEW YORK

In Proceedings for the
Reorganization of a
Corporation

In the Matter of STIRLING HOMEX
CORPORATION, Debtor.

BK-72-1399

In the Matter of U. S. SHELTER
CORPORATION, Debtor.

BK-72-1464

In the Matter of U. S. HOME MANAGEMENT
SERVICE, INC., Debtor.

BK-72-1496

In the Matter of PROGRESSIVE HOUSING
CORPORATION, Debtor.

BK-72-1497

In the Matter of CLAY DEVELOPMENT
CORPORATION, Debtor.

BK-72-1498

In the Matter of KABETH PROPERTIES,
INC., Debtor.

BK-72-1499

Transcript of Proceedings had and Testimony taken in the
above-entitled cause of action, before the HON. HAROLD P. BURKE,
Judge, United States District Court, United States Courthouse,
Rochester, New York, on Monday, June 28, 1976.

APPEARANCES:

FRANK G. RAICHLE, ESQ.
10 Lafayette^e Square
Buffalo, New York 14203

Appearing as the Trustee

MESSRS. JOHNSON, REIF & MULLAN, P.C.
(By Byron Johnson, Esq.)
47 South Fitzhugh Street
Rochester, New York 14614

Appearing on behalf of the Trustee

MESSRS. ZALKIN, RODIN & GOODMAN
(By Richard S. Toder, Esq.)
750 Third Avenue
New York, New York 10017

Appearing on behalf of Chemical Bank

MESSRS. PHILLIPS. LYTLE, HITCHCOCK, BLAINE & HUBER
(By Alexander C. Cordes, Esq.)
3400 Marine Midland Center
Buffalo, New York 14203

Appearing on behalf of Marine Midland Bank
as Successor to Marine Midland Bank-Western
and Marine Midland Bank-Rochester.

* * *

C O N T E N T S

<u>WITNESS</u>	<u>EXAMINED BY</u>	<u>PAGES</u>
Frank G. Raichle	Mr. Johnson	5-15

E X H I B I T S

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>MARKED FOR IDENTIFICATION</u>
1	Petition of the Trustee verified June 10, 1975	7
2	Answers to first set of banks' interrogatories	7
3	Answers to second set of banks' interrogatories	7
4	Financial Statement	8
5	Financial Statement	8

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Rochester, New York

Monday, June 28, 1976

— — —
THE CLERK: In the matter of Stirling Homex Corporation. In the matter of U. S. Shelter Corporation. Hearing on application of trustee to confirm findings and recommendations.

THE COURT: Mr. Johnson.

MR. JOHNSON: Your Honor, I am Byron Johnson of Johnson, Reif and Mullan, attorneys for Frank G. Raichle, the trustee of Stirling Homex Corporation in the reorganization, also as trustee of U. S. Shelter Corporation, U. S. Home Management Service, Inc., Progressive Housing Corporation, Clay Development Corporation and Rabeth Properties, Inc., the latter five corporations being also debtors in the organization and wholly-owned subsidiaries of Stirling Homex Corporation.

There are two matters before the Court this afternoon. One is an application to confirm the report of Judge Hayes with respect to a settlement of claims with a consortium of banks who are

creditors of the primary debtor, Stirling Homex Corporation.

Secondly, there is an application which has been pending for one year praying for the substantive consolidation of the administration of Stirling Homex Corporation and its subsidiary corporations, to consolidate all of the assets and liabilities of those subsidiary corporations, five in number, into the parent corporation, Stirling Homex Corporation. Now, these matters were brought on by separate petitions, but one notice to the parties; the first petition being one to confirm the findings and recommendations of Judge Hayes, and the other, the petition of the trustee verified June 10, 1975, praying for substantive consolidation as I already mentioned.

There were no objections to the approval of the agreement for the settlement of the bank when the matter came on before Judge Hayes and he filed his findings and recommendations with you. By your notice, you directed all of those parties who had appeared before Judge Hayes to

appear before you two weeks ago on the 14th day of June and the matter, of course, was adjourned until today.

By a separate application to you, the substantive consolidation matter was also rescheduled for a hearing two weeks ago and in turn adjourned until today so that we have two matters. The importance of these two matters being brought together is signified by the settlement agreement which provides that the two shall be resolved concurrently. The banks or at least a majority of them had filed objections to the application for substantive consolidation. By the settlement agreement in the application which is before you for confirmation it was provided that those objections would be withdrawn contingent, of course, upon the approval of the findings of Judge Hayes.

In addition, in the substantive consolidation matter there was one additional objection of Clay Land Corporation and Clay Land Corporation withdrew its objection and that withdrawal was filed in your court last week.

Initially, I would like to mark for identification in connection with the application for substantive consolidation so that we may make a record, the petition of the trustee which is verified June 10, 1975 and which is attached to the order to show cause which brings on this matter before you. That will be the Trustee's Exhibit Number 1.

(TRUSTEE'S EXHIBIT NUMBER 1, PETITION OF THE TRUSTEE, VERIFIED JUNE 10, 1975, WAS MARKED FOR IDENTIFICATION.)

MR. JOHNSON: Additionally, as Exhibit Number 2, the answers to the first set of the banks' interrogatories filed in the substantive consolidation matter.

(TRUSTEE'S EXHIBIT NUMBER 2, ANSWERS TO FIRST SET OF BANKS' INTERROGATORIES, WAS MARKED FOR IDENTIFICATION.)

MR. JOHNSON: Number 3, the trustee's answers to the banks' second set of interrogatories.

(TRUSTEE'S EXHIBIT NUMBER 3, ANSWERS TO SECOND SET OF BANKS' INTERROGATORIES, WAS MARKED FOR IDENTIFICATION.)

MR. JOHNSON: The fourth exhibit that I would like to introduce is the Stirling Homex financial statement for the year ending July 31,

1971, prepared by Peat, Marwick, Mitchell and Company for the purpose of showing that the corporation reported its financial activities on a consolidated basis. That will be Exhibit Number 4, Trustee's Exhibit Number 4.

(TRUSTEE'S EXHIBIT NUMBER 4, FINANCIAL STATEMENT, WAS MARKED FOR IDENTIFICATION.)

MR. JOHNSON: Exhibit Number 5 is the Stirling Homex Corporation annual report for the year ending July 31, 1971 which will be Number 5 and this, likewise, is offered for the purpose of demonstrating that the corporation in its annual reports, at least one year before the petition in the bankruptcy, reported in the ordinary course of business on a consolidated basis.

(TRUSTEE'S EXHIBIT NUMBER 5, FINANCIAL STATEMENT, WAS MARKED FOR IDENTIFICATION.)

MR. JOHNSON: While there are no objections in the substantive consolidation matter, the trustee deems it important to make a very brief record. For that purpose, I would like to have Mr. Raichle take the witness stand.

FRANK G. RAICHLE,

called herein as a witness, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JOHNSON:

Q Mr. Raichle, while this is a record essentially for two cases being heard together, with respect to the application for substantive consolidation I would like to ask you if you do indeed reaffirm the statements set forth in your petition for substantive consolidation verified June 10, 1975, as well as in the answers to the banks' first and second set of interrogatories?

A I do.

Q And then further, Mr. Raichle, would you state the reason why in the trustee's opinion, in your opinion, it is essential that we have substantive consolidation of the five named subsidiaries into the parent corporation, Stirling Homex Corporation?

A It will take just a bit of history, not very much. The Stirling Homex Corporation, at the time of my appointment as trustee in Chapter X, had numerous subsidiaries, five of some importance. Of the five, two that are important for this purpose are U. S. Shelter by name and Kabeth Properties, Incorporated, by name.

First, as to U. S. Shelter. That was intended to be, as I searched the record and investigate the past, a finance company to finance the purchases of modules, the product of Stirling Homex.

In the course of events, in the month of December of 1971 or the month of January of 1972, it had borrowed for that purpose fifteen million dollars from the consortium of banks which is named elsewhere and throughout these proceedings. That was in addition to a loan to Stirling Homex itself of twenty-three million. I am speaking in round figures. The aggregate of the loans was thirty-eight million.

The dispute with which we are all familiar and is the subject of Bankruptcy Judge Hayes' findings are similarly pertinent herein before the Court. When I began to look at the transactions between Stirling Homex, the parent, and U. S. Shelter, I found in the records, if I might state it by way of conclusion, that there was no substantial separation of activity between U. S. Shelter and Stirling Homex. It had common officers, common employees, the Shelter Company was by and large an alter ego. The assets were on occasion commingled as were affairs inextricably bound up one with another.

I might say in the case of Kabeth Properties, the

other principal subsidiary, Kabeth was a construction company which prepared sites and did certain construction work for Stirling Homex. Here, again, the business affairs and property of the two companies was inextricably bound up. The officers were common to both companies during most of the period of time and when they weren't officers they were employees of Stirling Homex, the parent who became the officers of Kabeth.

Kabeth owns some property and owns it today worth, in my opinion, somewhere between a million and a half and two million dollars. The stock of both U. S. Shelter and Kabeth was owned, all of it in each instance, was owned by Stirling Homex. And each, as if I might use the phrase again, each of the subsidiaries served as an alter ego of the parent company, Stirling Homex.

I examined the accounts between Stirling Homex and Kabeth Properties and the accounts are most involved. I have examined the ledgers and seen the printouts from the computer and in my judgment it would be very costly and almost an impossible undertaking to separate the assets of one from the assets of the other or perhaps more accurately stated to strike a balance between the two of them.

Interminable litigation is foreseeable if Stirling

Homex were to file a claim against Kabeth and Kabeth filed a claim against Stirling Homex. I would feel that there were a conflict of interest at least on the face of things which would make necessary possibly a separate trustee for Kabeth and a separate trustee for Stirling Homex.

And also in the case of U. S. Shelter. Now this trusteeship has continued for almost four years. It is my considered judgment and the opinion of my accountants as well that if there is not a consolidation where you put all the assets in one pot, so to speak, and that you conduct the proceedings as one proceeding, in other words have a substantive consolidation, that foreseeable years of litigation might result and great expense to this company.

Now, with circumstances exactly this way financially, the claims filed, including the round figure of thirty-eight million for the consortium of banks, aggregate of fifty million within a few hundred, one way or the other, I now have thirteen million in round figures in cash, represented by certificates of deposits in the Marine Midland Bank.

I have prospects of ultimately liquidating all of the assets if all of the assets of these three companies

are viewed as one, about seventeen million dollars. Some of these claims, equalling twelve million five hundred thousand dollars, which is added to the thirty-eight million to make the fifty million are susceptible, in my opinion to a very substantial reduction.

I think the right word is that when we audit them in the sense of perhaps litigating before Judge Hayes or otherwise, that that amount might be reduced but in any event I should have sixteen or seventeen million dollars in the next matter of months to make a distribution.

And as the Court probably knows, the agreement with the banks provides for a payout to them, that would be the equivalent of what they would have received if they were unsecured creditors. Unless, despite the bar order, very substantial additional claims were to be allowed, a circumstance of which I cannot conceive.

So, that if we are saved the time and the money incident to unraveling, if possible, the relationship between Stirling and its subsidiaries, I would foresee that in the next matter of months we will be in a position to make an ultimate distribution that involves a course of sale of the Kabeth Properties which we have been unable to do in the complex situation with which we have been

confronted.

We had ten thousand modules, roughly speaking, and in round rigures, we have less than nine thousand left. I have succeeded in liquidating the others. We yet have Plant No. 1, our large plant, still to sell and, as I say, the property of Kabeth.

The banks have agreed, other creditors with whom I have talked to have agreed to the substantive consolidation and in my opinion there is a great advantage to the Stirling Homex estate and I can say without reservation I know of no one, no creditor of the parent company or other subsidiary who could be disadvantaged by the substantive consolidation. That is what I wanted to present to Your Honor.

(Thereupon the witness was excused.)

MR. JOHNSON: I would like the record to note that several attorneys for the banks have appeared and noted their appearance; that the Notice which this Court directed to be served on those who had filed objections or in the substantive consolidation matter or also on those who appeared before Judge Hayes, has been duly served and if there is anyone else who would like to note their appearance, I would request the Court to direct them to do so now.

THE COURT: I ask if there is any objection to the approval of the report and recommendation of the Bankruptcy Judge.

MR. JOHNSON: And also as to the application for substantive consolidation.

THE COURT: Is there any objection to the substantive consolidation?

MR. JOHNSON: Being none?

THE COURT: There is none. Let the record show there is no objection to either.

MR. JOHNSON: We are prepared to submit orders accordingly if the judge approves the application.

THE COURT: Both are approved and I will sign an order when submitted to me.

MR. JOHNSON: Thank you, sir.

THE COURT: That closes the hearing unless there is something else.

MR. JOHNSON: That's it.

THE COURT: All right.

(Thereupon the proceedings in the above-entitled matter was adjourned.)

* * *

SUBSTITUTE OFFICIAL REPORTER'S CERTIFICATE

I, Frances J. Mehner, Substitute Official Court Reporter for the United States District Court, for the Western District of New York, at Rochester, New York, do hereby certify that I reported in machine shorthand the proceedings had in open court in the above-entitled cause on June 28, 1976; and that the said proceedings were reduced to typewriting under my supervision; and that the foregoing transcript is a true and correct transcript of the said proceedings.

This 19th day of July, 1976.



Frances J. Mehner
Substitute Official Court Reporter

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

In the Matter of

STIRLING HOMEX CORPORATION,

Debtor.

ORDER CONFIRMING REPORT
OF BANKRUPTCY JUDGE

Re: Claims of:

The Chemical Bank, individually
and as agent.

Chase Manhattan Bank, N.A.

Marine Midland Bank, as Successor
to Marine Midland Bank-Western
and Marine Midland Bank-Rochester

Lincoln First Bank of Rochester
formerly known as Lincoln Rochester
Trust Company

First National Bank of Chicago

The Union Commerce Bank

The First National State Bank of
New Jersey

Union Planters National Bank of
Memphis

In Proceedings for
Reorganization of a
Corporation Under
Chapter X of the
Bankruptcy Act.

No. BK-72-1399

In the Matter of

UNITED STATES SHELTER CORPORATION,

Debtor.

No. BK-72-1464

Re: Claim of The Chemical Bank

Upon the petition of Frank G. Raichle, trustee in reorganization of Stirling Homex Corporation and United States Shelter Corporation, debtors, dated May 17, 1976, requesting this court to confirm the Findings and Recommendations filed with this court by Hon. Edward D. Hayes, Bankruptcy Judge, on May 14, 1976; and on the order of this court dated May 20, 1976 fixing June 14, 1975 at 2:00 o'clock p.m., United States Court House, 100 State Street, Rochester, New York, 14614, as the time and place of a hearing to confirm said Findings and Recommendations of the Bankruptcy Judge, filed May 14, 1976 which recommended approval of an agreement entered into as of March 31, 1976 by the trustee and the above named creditor banks, (the "Settlement Agreement") copy of which is appended to said order of this court dated May 20, 1975, which order also directed the manner in which service thereof should be made upon the parties to this proceeding as designated by said order;

And this matter having been duly adjourned by order of this court to June 28, 1976 at 2:00 o'clock p.m., United States Court House, 100 State Street, Rochester, New York, 14614; and this matter having duly come on to be heard before this court on June 28, 1976 at 2:00 o'clock p.m. and said trustee by his attorneys; Johnson, Reif & Mullan, P.C. (Byron Johnson, Esq. and Thomas W. Petrillo, Esq. of counsel) having moved for an order confirming the said Findings and Recommendation filed by the Hon. Edward D. Hayes, Bankruptcy Judge on May 14, 1976 which recommended approval of the settlement agreement and the said banks by their counsel having joined in said motion of the trustee to confirm said Findings and Recommendations as follows: Chemical Bank by Zalkin, Rodin & Goodman (Richard S. Toder, Esq. of counsel) and Marine Midland Bank by Phillips, Lytle, Hitchcock, Blaine & Huber (Alexander Cordes,

Esq., of counsel) and the said trustee and the said banks by supplemental agreement having stipulated that the Termination Date of the settlement agreement as provided in section 7 of the settlement agreement shall be extended to June 30, 1976 and on the return of said motion there having been no objection; and upon all of the proceedings had herein, and due deliberation having been had and this court having determined that it is in the best interest of the estates of Stirling Homex Corporation and United States Shelter Corporation, debtors, and of all of the persons and parties interested therein that the said Findings and Recommendations of the Bankruptcy Judge by confirmed; it is

ORDERED that the Findings and Recommendations of the Hon. Edward D. Hayes, Bankruptcy Judge, filed with this court May 14, 1976 which recommended that this court approve the settlement agreement dated as of March 31, 1976 between and among Frank G. Raichle, as reorganization trustee of Stirling Homex Corporation, debtor, and of its subsidiary debtor corporations United States Shelter Corporation, United States Home Management Service, Inc., Progressive Housing Corporation, Clay Development Corporation, Kabeth Properties, Inc. and the banks' signatory to said agreement, to wit: Chemical Bank, Chase Manhattan Bank, N.A., Marine Midland Bank, as successor to Marine Midland Bank - Western and Marine Midland Bank - Rochester, Lincoln First Bank of Rochester, The First National Bank of Chicago, The Union Commerce Bank, The First National State Bank of New Jersey and Union Planters National Bank of Memphis be, and the same hereby are, in all respects confirmed and the settlement agreement is approved in all respects, and it is further

ORDERED that the Trustee is authorized and directed to make the payments to the Banks described in section 1 of the settlement agreement; and it is further

ORDERED that the claims with respect to each Bank in the amounts set forth in Schedules III, IV and V annexed to the settlement agreement be and the same hereby are allowed as unsecured claims and/or administration claims as set forth in said Schedules.

Dated: Rochester, New York
June 29 , 1976.

St. Haines P. Burke
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

A 146

ORDER DIRECTING
SUBSTANTIVE CONSOLIDATION

In the Matter of STIRLING HOMEX
CORPORATION, Debtor.

BK-72-1399

In the Matter of UNITED STATES SHELTER
CORPORATION, Debtor.

BK-72-1464

In the Matter of UNITED STATES HOME
MANAGEMENT SERVICE, INC., Debtor.

BK-72-1496

In the Matter of PROGRESSIVE HOUSING
CORPORATION, Debtor.

BK-72-1497

In the Matter of CLAY DEVELOPMENT
CORPORATION, Debtor.

BK-72-1498

In the Matter of KABETH PROPERTIES,
INC., Debtor.

BK-72-1499

Upon the petition of Frank G. Raichle, trustee in reorganiza-
tion of Stirling Homex Corporation, and of its subsidiary corporations,
to wit: United States Shelter Corporation, Home Management Service, Inc.,
Progressive Housing Corporation, Clay Development Corporation and Kabeth
Properties, Inc., verified June 10, 1975, applying for an order substan-
tively consolidating the assets and liabilities of Stirling Homex
Corporation and its above named subsidiary corporations; and objections
thereto which were filed by Chemical Bank, Chase Manhattan Bank, N.A.,
The First National Bank of Chicago, Union Commerce Bank, First National
State Bank of New Jersey and Union Planters National Bank of Memphis,
Marine Midland Bank - Western and Marine Midland Bank - Rochester

which objections are withdrawn by an agreement between said banks and the Trustee made as of March 31, 1976 which is approved by a separate order of this court made concurrently herewith; and an objection having been filed also by Clay Land Corporation which has been subsequently withdrawn in writing and filed with this court; and upon the affidavit of Thomas W. Petrillo, Esq., a principal of Johnson, Reif & Mullan, P.C., attorneys for the trustee, sworn to May 19, 1976, praying that this matter, which initially was made returnable on July 14, 1975 and upon consent of all persons who appeared on said date, was adjourned to July 28, 1975 when the matter was heard by this court, be rescheduled for hearing; and this court by order of May 20, 1976 having fixed June 14, 1976 at 2:00 o'clock p.m., United States Court House, 100 State Street, Rochester, New York, 14614, as the time and place for a re-hearing upon the application of the trustee for substantive consolidation; and this court by said order dated May 20, 1976, having directed the manner in which notice of the said rescheduling of hearing herein should be given and the parties to whom such notice should be given; and this court having ordered that this matter as so rescheduled be adjourned to June 28, 1976 at 2:00 o'clock p.m., United States Court House, 100 State Street, Rochester, New York, 14614, and said application having duly come on to be heard at said time and place and the trustee having appeared hereinby his attorneys Johnson, Reif & Mullan, P.C. (Byron Johnson, Esq., and Thomas W. Petrillo, Esq., of counsel) in support of said application for substantive consolidation; and testimony having been taken and evidence received upon such hearing; and there being no objection to said application;

And due deliberation having been had and this court having found that it would be in the best interests of said Stirling Homex

Corporation, debtor and its said subsidiary corporations, also in reorganization, and of the parties interested in said corporations and in these proceedings in reorganization that the assets and liabilities of said subsidiary corporations be substantively consolidated into Stirling Homex Corporation, debtor, which will be the surviving and continuing corporation, it is

ORDERED that the assets and liabilities of United States Shelter Corporation, United States Home Management Service, Inc., Progressive Housing Corporation, Clay Development Corporation and Kabeth Properties, Inc. be, and the same hereby are, substantively consolidated with the assets and liabilities of Stirling Homex Corporation which shall be the surviving and continuing corporate debtor, and it is further

ORDERED that the proceedings for the reorganization under Chapter X of the Bankruptcy Act of United States Shelter Corporation, United States Management Service, Inc., Progressive Housing Corporation, Clay Development Corporation and Kabeth Properties Inc., debtors, henceforth be deemed to have been consolidated into the reorganization under Chapter X, Bankruptcy Act, of Stirling Homex, Corporation, debtor.

Dated: Rochester, New York
June 29, 1976.

St. Harold P. Buick
United States District Judge

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

A 149

In the Matter of

STIRLING HOMEX CORPORATION,

Consolidated Debtor.

In Proceedings for
Reorganization Under
Chapter X of the
Bankruptcy Act.

BK-72 1399

**NOTICE PURSUANT TO SECTION
167(5), (6) AND SECTION 169 OF
THE BANKRUPTCY ACT.**

Notice to Creditors and Stockholders:

Pursuant to the application of the Trustee dated April 28, 1977, the Report of the Trustee dated and filed April 18, 1977 with this Court, pursuant to Section 167(1) of Chapter X of the Bankruptcy Act, and the Order of this Court dated April 28, 1977, copies of which are enclosed herewith:

A hearing will be had on the 13th day of June, 1977, 2:00 p.m., United States Court House, 100 State Street, Rochester, New York upon the application of the Trustee for a determination that the consolidated debtor be adjudicated insolvent and that the shareholders as such not vote on any Plan of Reorganization which may be adopted, or participate in any distribution thereunder.

A hearing will also be held on the 13th day of June 1977, 2:00 p.m., United States Court House, 100 State Street, Rochester, New York, upon the application of the Trustee for a judicial determination of whether stockholders who have previously filed proofs of claim based on fraud or other securities law violations shall be included as general creditors for the purpose of participation in any distribution under any Plan to be adopted.

Notwithstanding the Trustee's opinion that Stirling Homex Corporation is hopelessly insolvent and that the shareholders as such have no equity in the corporation, the 1st day of July 1977, has been fixed as the date by which the suggestions for the formulation of a Plan of Reorganization or proposals in the form of a Plan of Reorganization shall be submitted to the Trustee by creditors, shareholders, or any other parties in interest. The 20th day of July 1977 has been fixed by said Order of the Court as the date by which a Plan of Reorganization shall be submitted by the Trustee pursuant to Chapter X of the Bankruptcy Act.

The Report of the Trustees dated and filed April 18, 1977, a copy of which is enclosed, will, it is hoped, give creditors, stockholders and other parties in interest the information necessary to make suggestions should they desire to do so for the formulation of a Plan of Reorganization of Stirling Homex Corporation or proposals in the form of a Plan. All suggestions should be made to the Trustee in care of his attorneys, Johnson, Reif & Mullan, P.C., at their offices at 47 South Fitzhugh Street, Rochester, New York 14614.

Copies of any and all papers submitted in answer to the application of the Trustee upon which hearings will be held on June 13, 1977, pursuant to the said Order of the Court, shall be filed with the Court and copies thereof served on the Trustee's Attorneys at their offices on or before June 6, 1977.

Dated: April 28, 1977

Frank G. Raichle, Trustee
Johnson, Reif & Mullan, P.C.
Attorneys for Trustee
47 South Fitzhugh Street
Rochester, New York 14614
Tel: (716) 262-5715, 262-5710

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

In the Matter of

STIRLING HOMEX CORPORATION,

Consolidated Debtor.

In Proceedings for
Reorganization Under
Chapter X of the
Bankruptcy Act.

BK-72-1399

**ORDER FIXING DATE FOR HEARINGS,
DATE FOR SUBMISSION OF PROPOSALS
FOR INCLUSION IN THE PLAN, DATE
FOR SUBMISSION OF PLAN BY TRUSTEE,
AND DIRECTING SERVICE.**

Upon the application of Frank G. Raichle, Trustee in Reorganization of Stirling Homex Corporation, Consolidated Debtor, dated April 28, 1977, and upon the Report of the Trustee, dated April 18, 1977, and filed with this Court on April 18, 1977, and sufficient reason appearing therefor, it is

ORDERED that the 13th day of June, 1977, 2:00 p.m., United States Court House, 100 State Street, Rochester, New York, be and hereby is, fixed as the time and place of a hearing on the application of Frank G. Raichle, Trustee, for a determination that the Consolidated Debtor be adjudicated insolvent and that the stockholders not vote on any proposed Plan of Reorganization or participate in any distribution thereunder; and it is further

ORDERED that the 13th day of June, 1977, 2:00 p.m., United States Court House, 100 State Street, Rochester, New York, be and hereby is, fixed as the time and place of a hearing on the application of Frank G. Raichle, Trustee, for a determination of whether the stockholders who have heretofore filed proofs of claims based on fraud or other securities law violation shall be included as general creditors for the purpose of participation in any distribution under any adopted Plan of Reorganization; and it is further

ORDERED that all papers to be submitted in connection with the hearings fixed by the foregoing decretal paragraphs shall be filed with the Court and copies thereof served on or before June 6, 1977, upon the Trustee's attorneys; and it is further

ORDERED that the 1st day of July, 1977, be and hereby is fixed as the date by which suggestions for the formulation of a Plan of Reorganization or proposals in the form of a Plan shall be submitted to the Trustee by creditors or shareholders or other parties of interest; and it is further

ORDERED that the Trustee prepare and submit to this Court by the 20th day of July, 1977, a Plan of Reorganization pursuant to Chapter X of the Bankruptcy Act; and it is further

ORDERED that it shall be deemed sufficient notice of these matters to be taken upon said application of the Trustee and the said Report of the Trustee,

(a) If a copy of this Order, with notice thereof, a copy of the said application of Frank G. Raichle, Trustee, dated April 28, 1977, and a copy of the said Report of Frank G. Raichle, Trustee, dated and filed April 18, 1977, be served by ordinary mail on or before May 20, 1977 as follows:

1. Upon all creditors of Stirling Homex Corporation, consolidated debtor, enumerated in the List of Creditors filed with the Reorganization Court on September 11, 1972, and all creditors who, while not so listed, have filed claims against the said debtor.

Said notice shall be directed to the creditors at their addresses as set forth in the aforementioned list; if a different address is stated in a Proof of Claim filed in the above-entitled proceedings, at the address so stated.

2. Upon the shareholders of Stirling Homex Corporation, consolidated debtor, at the addresses listed for said shareholders upon the records of the debtor, as of December 31, 1973.

3. Upon the Securities and Exchange Commission, 26 Federal Plaza, New York, New York 10007; Attention: Marvin E. Jacob, Assistant Regional Administrator; and to said Securities and Exchange Commission, 500 North Capital Street, N. W., Washington, D. C. 20549.

4. Upon the Secretary of the Treasury, Treasury Department, 15th and Pennsylvania Avenue, Washington, D. C. 20220.

5. Upon the United States Attorney, United States Court House, Buffalo, New York 14202.

and

(b) If a copy of this Order, with notice thereof, and a copy of the said application of Frank G. Raichle, Trustee, dated April 28, 1977, shall be published at least once a week for two successive weeks before May 23, 1977, in both the Rochester Democrat & Chronicle, Rochester, New York and the Wall Street Journal, New York, New York.

Dated: Rochester, New York
April 28, 1977

HONORABLE HAROLD P. BURKE
United States District Judge

In the Matter of

STIRLING HOMEX CORPORATION,

Consolidated Debtor.

In Proceedings for
Reorganization Under
Chapter X of the
Bankruptcy Act.

BK-72-1399

APPLICATION OF TRUSTEE

TO: HONORABLE HAROLD P. BURKE
United States District Judge

The application of Frank G. Raichle, Trustee of Stirling Homex Corporation, as consolidated debtor, respectfully states that:

1. I am the Reorganization Trustee in this proceeding, having been duly appointed as Trustee of the estate of the above named debtor on July 13, 1972. I thereafter duly qualified and have been acting as such Trustee since the date of my appointment.

2. In accordance with the directions contained in paragraph 17 of the order of my appointment I have investigated the acts, conduct, property, liabilities and financial condition of said debtor, the operation of its business and the desirability of the continuance thereof. In addition, in pursuance of further directions contained in said paragraph of the order of my appointment, I have heretofore and on April 18, 1977 submitted a Report of my activities in connection with the results of said investigation, together with my conclusion.

3. Paragraph 17 of the order of my appointment directs that within ten days after the filing of my said Report, I make application to the Court for direction as to the form and manner of a brief statement thereof to be submitted to the creditors, stockholders, the Securities and Exchange Commission and such other persons as the Court may designate. In view of the multiplicity of proceedings had and taken herein and in the light of the many faceted matters and things involved in my Report, I respectfully request that in lieu of a brief statement or summary of the Report, I submit the Report in its entirety to the creditors and stockholders, the Securities and Exchange Commission, the Secretary of the Treasury, and such other persons, firms or corporations and parties in interest who have appeared in this proceeding.

4. This application is made in part pursuant to Section 167(5) and (6) and Section 169 of Chapter X of the Bankruptcy Act for an order (a) fixing a date by which creditors or shareholders and any and all parties in interest shall file with me as Trustee suggestions for the formulation of a Plan of Reorganization or proposal in the form of a Plan; (b) fixing a date pursuant to which a Plan shall be filed by me as Trustee pursuant to Chapter X of the Bankruptcy Act; and (c) fixing a date by which and the manner in which service of a copy of my Report, a copy of this application and of the order to be entered thereon shall be served on creditors and shareholders including publication, in order to insure broad dissemination relative to this proceeding.

5. My Report dated and filed with this Court April 18, 1977, sets forth information as to the consolidated debtor's history, properties, liabilities, financial condition, the operation of the business by me as Trustee during my administration, a description of the claims asserted by creditors, actions taken by me as Trustee to recover moneys on behalf of the consolidated debtor and its subsidiaries and my view that the debtor is insolvent and that it is not feasible to formulate a Plan of Reorganization for the continued operation of the consolidated debtor, but that the Plan for the orderly and proper administration of the consolidated debtor should be the liquidation of the assets which continue to be held by me as Trustee and the distribution of the proceeds to the creditors.

6. I also request the Court to fix a time and place for a hearing for a determination that the consolidated debtor be adjudged insolvent and that the stockholders as such not vote on any proposed Plan of Reorganization or participate in any distribution. I also request the Court to fix the same time and place for a hearing for a determination of whether stockholders who have heretofore filed proofs of claim based on fraud or other violations of the securities laws shall be included as general creditors for the purpose of participating in any distribution under any Plan of Reorganization to be adopted.

WHEREFORE, I request this Court to direct the manner of service of this application and the order to be entered thereon and the persons to be given notice, fix dates for hearings upon this application, fix a date by which creditors and shareholders shall submit suggestions for the formulation of a Plan of Reorganization or proposals in the form of a Plan, and fix a date by which the Trustee shall prepare and submit to this Court his proposed Plan pursuant to Chapter X of the Bankruptcy Act.

Dated: April 28, 1977

FRANK G. RAICHLE, TRUSTEE
Johnson, Reir & Mullan, P.C.
Attorneys for Trustee
47 South Fitzhugh Street
Rochester, New York 14614
Tel.: (716) 262-5710

STIRLING HOMEX CORPORATION

Consolidated Debtor

REPORT OF

FRANK G. RAICHLE

TRUSTEE

Received and Filed
April 18, 1977
Clerk, United States District Court
Western District of New York

TABLE OF CONTENTS

A 155

	Page
Introduction	2
History of Debtor	3
Formation	3
Activities	3
Public stock Offerings	3
Bank Borrowings	3
Causes of Failure of Debtor	4
Administration by the Trustee	5
General Administration Matters	5
Substantive Consolidation	6
Assets of Debtor and Disposition by Trustee	7
Module Sales	7
Sales of Other Personal Property and Services	7
Real Property	8
Erie Grandview Site and Modules	9
Claims and Causes of Action in Favor of Debtor	9
Tax Refunds	9
Condemnation Action	9
Real Property Tax Proceeding	10
Retainages	10
M. Thurston Little Matter	11
Mortgage Foreclosures	11
Former Officers and Directors	12
Claims Against Debtor and Dispositions to Date	12
Claims Filed by Creditors	12
Bank Claims	14
Travelers Indemnity Claim	15
Summit Metropolitan Housing, Inc. and Akron Metropolitan Housing Authority Claims	15
Ohio Personal Property Tax Claim	16
New York Sales Tax Claim	16
Roy Anderson, Jr., Inc. Claim	17
North American Car Corporation Claim	17
Stirlings and Yanowitch Claims	18
Secured Claims	18
Route 57 & 31 Development Corp. Claim	19
Employee Claims	19
Shareholder Claims	19
Trustee's Conclusion Concerning the Feasibility of Reorganization	19
Trustee's Conclusion Concerning Solvency	20
Further Proceedings	20
Exhibits	20
I. Stirling Homex Corporation Consolidated Balance Sheet, July 11, 1972	22
II. Summary Statement of Cash Receipts and Disbursements, July 12, 1972 through March 31, 1977	29
III. Summary Schedule of Claims Against Debtors	30

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

A 156

In the Matter of

STIRLING HOMEX CORPORATION,

Consolidated Debtor.

In Proceedings for
Reorganization Under
Chapter X of the
Bankruptcy Act.

BK-72-1399

**Report of Frank G. Raichle, Trustee
of Consolidated Debtor in Reorganization,
Pursuant to Section 167(1) of the Bankruptcy Act**

To: The Honorable Harold P. Burke
United States District Judge
for the Western District of New York

INTRODUCTION

This report submitted by Frank G. Raichle, Trustee of Stirling Homex Corporation and subsidiaries, (collectively the "Debtor") pursuant to Chapter X of the Bankruptcy Act in order to furnish to all interested persons information as to the Debtor's history, properties, liabilities and financial condition, and the operation of Debtor's business by the Trustee during his administration. It also describes the claims asserted by creditors, action taken by the Trustee to recover monies on behalf of the Debtor and the Trustee's view concerning the future of the Debtor.

On July 12, 1972, Stirling Homex Corporation filed a petition in the United States District Court for the Western District of New York ("Court") seeking reorganization pursuant to Chapter X of the Bankruptcy Act. United States District Judge Harold P. Burke, by Order dated July 13, 1972, approved the petition and appointed Frank G. Raichle as Trustee.

On July 21, 1972, U. S. Shelter Corporation (a wholly-owned subsidiary of Stirling Homex) filed a petition seeking reorganization under Chapter X, and said petition was approved by the Court the same day and Frank G. Raichle was appointed Trustee. On July 27, 1972, petitions were filed for Clay Development Corporation, U. S. Home Management Service, Inc., Progressive Housing Corporation and Kabeth Properties, Inc. (all wholly-owned subsidiaries of Stirling Homex) seeking reorganization under Chapter X, and said petitions were approved by the Court the same day and Frank G. Raichle was appointed Trustee. All of said proceedings were subsequently consolidated into one proceeding by Court Order dated June 29, 1976.

On July 25, 1972, the Securities and Exchange Commission intervened in the proceedings and has participated in them since that date.

Pursuant to Court Order dated July 24, 1972, Jaeckle, Fleischmann & Mugel was retained by the Trustee as his counsel. On December 16, 1974, pursuant to Court Order, Jaeckle, Fleischmann & Mugel withdrew and Johnson, Reif and Mullan was retained by the Trustee as counsel. On July 20, 1972, by Court Order, the Trustee retained S. D. Leidesdorf & Co. as his accountants.

Appearances in the reorganization proceedings have been filed by counsel for the Debtor and counsel for many of the major creditors of Debtor.

HISTORY OF DEBTOR

A 157

Formation:

Stirling Homex Corporation was incorporated on July 22, 1968, under the laws of the State of Delaware and commenced business in August of that year. At that time, Messrs. David Stirling, Jr. William G. Stirling, David Stirling, Sr. and Harper Sibley, Jr. received directly or through corporations which they controlled an aggregate of 6,400,000 shares of Common Stock of Debtor in return for land, building and manufacturing facilities in Avon, New York, a patent application, processes and know-how relating to the assembly-line manufacture of housing, \$6,000 in cash and the outstanding stock of three corporations in the land and housing development business.

During August, 1968, Debtor received net proceeds of \$1,570,000 from the sale of 1,600,000 shares of Common Stock through a private placement.

Activities:

Up to the date of the filing of the Petition under Chapter X, Stirling Homex was engaged in the assembly-line manufacture and sale of modular housing units for two-story wood frame townhouses and apartments. These units, consisting of one to four modules, were manufactured at the plant in Avon, New York, and were shipped to the construction site by truck or rail, lifted by crane onto the foundations and joined to each other and the foundation. The on-site development work and installation were performed by Debtor or its agents in a conventional manner. As of the date of the filing of the Chapter X Petition, Debtor had manufactured 18,351 modules, of which 8,250 had been installed, comprising a total of 2,665 dwelling units, in 39 projects located in six states. In addition to the above, Debtor expended a substantial amount of time, effort and money in the research and development of a modular high-rise system.

Public Stock Offerings:

The first public offering occurred on February 19, 1970 when 1,175,000 shares of Common Stock were offered at \$16.50 per share. Of this amount, 400,000 shares were sold for the account of Debtor and 775,000 shares were sold by stockholders. Proceeds to Debtor from this offering were approximately \$6,100,000. Within a few days, the stock was selling in excess of \$30 per share which was more than 200 times earnings. The stock was subsequently traded on the Over-the Counter market.

Debtor made a second public offering on July 29, 1971 of 500,000 shares of Cumulative Convertible Preferred Stock at \$40 per share realizing proceeds of approximately \$19,000,000.

Bank Borrowings:

Through the years, Debtor established relationships with various banks culminating in Agreements with a consortium of nine banks pursuant to which a total of \$55 million would be available provided certain conditions were met. Under these Agreements, approximately \$38 million was actually borrowed and, at the date of filing of the Petition under Chapter X, a balance of \$37,433,000 plus interest was owed, after the banks had offset amounts Debtor had on deposit in the respective banks. Chemical Bank, The Chase Manhattan Bank, N. A., The First National Bank of Chicago, Marine Midland Bank-Western, Marine Midland Bank-Rochester, Union Commerce Bank, Lincoln Rochester Trust Company, First National State Bank of New Jersey and Union Planters National Bank of Memphis were members of the consortium.

CAUSES OF FAILURE OF DEBTOR

The causes of Debtor's failure are many and complex. Some of them were the direct result of bad management decisions and some resulted from the general nature of the modular housing business.

The announcement of "Operation Breakthrough" by the U. S. Department of Housing and Urban Development in or about April of 1969, together with other programs administered by the Federal Housing Administration, signaled Government entry into providing housing as never before. This apparent unlimited demand for Debtor's product, together with the generally recognized higher prices which Government subsidized or guaranteed projects usually afford, led Debtor's management to the decision to limit the market for its modules to such projects, usually of the so-called "turnkey" variety. Debtor never sold modules to other developers, persistently doing itself all of the site preparation and installation of modules. The "turnkey" nature of such contracts, with no progress payments, led to the requirement that Debtor have a vast amount of cash invested "upfront" on all its projects. The premium price for the modules did not make up for the debt-service, the delays coincident with government projects and the effect of limiting the market for the modules to such projects.

The above noted problems were heightened by a fundamental difficulty resulting from the attempt to combine a manufacturing operation with a real estate development operation. The rhythm of a manufacturing operation is one of steady and continuous production of the product at all times. Because of factors such as weather, unique site conditions, zoning problems, the requirement of local, state and federal approvals and the like, the rhythm of a real estate development operation is very erratic. This fundamental difficulty, coupled with the decision to limit the market for the modules by not selling them to private developers or individuals, resulted in an ever-increasing inventory of uninstalled modules stored in open storage in over seven locations in four states. At the date of the filing of the Petition, there were 10,091 uninstalled modules on hand. The storage period thus created, amounting to years in some cases, led to the need for substantial rehabilitation of the modules before they could be installed at the site. This took an additional substantial amount of Debtor's time and money.

Another fundamental problem of the modular housing industry is the expense and difficulty of getting the modules from the plant to the site. This problem was accentuated by Debtor when it located its single manufacturing plant in Avon, New York, thus preventing it from taking advantage of the normal shipping radius to the north because of Lake Ontario. It would have been preferable to have three small plants, one in the north, one in the middle states and one in the south, instead of one large (150,000 sq. ft.) plant in Avon, New York.

Faced with the need for enormous amounts of cash, Debtor aggravated the problem with an extremely high overhead which included many extravagant items. Debtor had two corporate airplanes, elaborately decorated offices, extremely heavy payroll, including many highly paid executives, limousines, countless company cars, expense accounts, lavish promotions and many other items.

It is clear that the nature of the business, together with the manner in which the business was conducted, required vast amounts of capital. The cash generated by the common stock offering of February 19, 1970 mostly went for the benefit of Debtor's original investors. Of the 1,175,000 shares sold, only 400,000 shares were for the benefit of the Debtor. Put another way, \$18 million was raised; however, the Debtor only received \$6.1 million for its use in the business. By doing so, Debtor did not raise sufficient cash to sustain itself for any significant period and it hampered its ability to generate cash in the future through the avenue of public offerings. The above led to a second public offering a year and a half later of 500,000 share of cumulative convertible preferred stock. All of the \$19 million raised through that offering was for the benefit of the Debtor. Coincident with the public offering, Debtor borrowed heavily, establishing a \$55 million line of credit and actually borrowing \$38 million over an extended period of time. The debt service on the bank debt alone amounted to millions of dollars a year. The ultimate cause of the filing of the Petition under Chapter X was the calling of the bank loans and the offset of Debtor's bank accounts on Friday, July 7, 1972, leaving Debtor with no cash.

Finally, to fully understand the causes of the failure of Debtor, it is necessary to comment on its accounting practices. Almost from the beginning, its financial statements were distorted by the premature recognition of sales. Because Debtor recognized sales essentially at the point when a prospective customer for its modules was identified and completed modules could be assigned to a "project", Debtor was encouraged to continue the production of modules in fact for inventory, while treating them as part of "sales". Another accounting practice which distorted reality was the so-called "front loading" of profit on the modules and ultimately taking losses on the site work. Since each project required Debtor to accomplish both the manufacture of the modules and the site work, this practice misled the management of Debtor and others as to how well Debtor's business was doing and discouraged corrective action until it was too late.

General Administrative Matters:

Immediately after his appointment, the Trustee met with representatives of the Banks and the bonding company (Travelers Indemnity Company) regarding the continuation of projects in process. There were seven such projects, including two in Akron, Ohio; and one in Elmira, New York; Brockport, New York; Bradford, Pennsylvania; Ramapo and Rutgers (New Jersey), respectively. At that meeting, it became clear that a new financing arrangement could not be made with the Banks in light of their refusal to loan additional funds. After a review of the potential net return on the various projects in progress, together with the fact that there was no cash to continue the work, it was clear that the Trustee was not in a position to bring the various projects to conclusion and, therefore, Travelers was left to complete the projects pursuant to existing payment and performance bonds. The completion of the subject projects has resulted in claims by Travelers against Debtor's estate in excess of \$5 million, which is net of receipts by Travelers of contract balances for the various projects.

From the outset of the Trusteeship, there were substantial cash requirements, including the continuation of insurance and security coverage for the modules and the retention of key personnel. To generate the initial cash required, it was necessary to issue Trustee Certificates. On August 3, 1972, pursuant to Court Order, Trustee Certificates were issued in the principal amount of \$627,000. Cash receipts during the month of August were sufficient to enable the Trustee to pay the full principal and interest due under the Certificates on August 28, 1972.

The Debtor once employed in excess of 1,100 people. The Trustee has retained a staff limited to only key personnel. By the end of calendar, 1972, the staff had been reduced to 63 people, including 28 in the security department. From the date of the filing of the Chapter X Petition to April of 1973, the staff operated under the direction of Paul M. Kuveke, Jr., the former President of Debtor. From April of 1973 to the present, the staff has operated under the direction of Charles P. Northrop. The staff presently consists of 13 people, including security personnel. At the date of the filing of the Chapter X Petition, there were two branch offices which were subsequently closed, and all operations have been conducted from the main offices and plant of Debtor in Avon, New York. The staff has been responsible for generating close to \$20 million in receipts to date and has sold and shipped more modules than Debtor prior to the filing of the Chapter X Petition. The Trustee has filed monthly reports with the Court covering cash receipts and disbursements. Receipts and disbursements for the period July 12, 1972 to March 31, 1977 are more particularly set forth in Exhibit II attached hereto.

From time to time, the Trustee has found himself with funds on deposit in excess of amounts necessary to meet anticipated current expenses. So that such funds did not lie idle, the Trustee applied to the Court for permission to invest in interest-bearing time deposits. The first of such Orders, dated October 11, 1972, authorized the Trustee to transfer up to \$2,000,000 to interest-bearing saving time deposits or time certificates of deposit with maturities of up to 90 days in designated depositories: Chemical Bank, The Chase Manhattan Bank, N. A. and Marine Midland Bank-Rochester. A subsequent Order authorized the purchase of 30-day Certificates of Deposit in Marine Midland Bank-Western provided that they furnish a Bond and that a Surety Bond furnished by Aetna Life & Casualty Company be maintained in an amount no less than the amount of such Certificates of Deposit and cash on deposit in such depository.

Thereafter, by Order of Hon. Harold P. Burke, United States District Judge, dated March 16, 1976, upon application by the Trustee, the surety bond on the depository's bond was dispensed with and in its place, to secure the depository's bond, Marine Midland Bank was required to deposit with the Federal Reserve Bank of New York, or its branch in Buffalo, New York, securities designated in Title 6, United States Code, Section 15, having an aggregate par value at all times equal to the amount of the bond in the custody of the Federal Reserve Bank of New York or of its branch located in the City of Buffalo, New York. Interest earned to date on such Certificates of Deposit exceed \$2.6 million.

Immediately after his appointment, the Trustee employed the firm of S. D. Leidesdorf & Co., Certified Public Accountants of New York City, to conduct an audit of the books and records of the Debtor and its Subsidiaries upon authorization of Hon. Harold P. Burke, United States District Judge, by Order dated July 20, 1972. Their report on such examination, as at July 11, 1972, is attached hereto as Exhibit I. S. D. Leidesdorf was also instrumental in expediting the federal tax refunds totalling \$3,077,571.00 received in August and September of 1972. Upon application, and after due notice and hearing, Hon. Harold P. Burke, United States District Judge, by Order dated June 22, 1973 authorized the payment of \$109,615.00 to S. D. Leidesdorf & Co. for accounting services for the period July 20, 1972 through October 31, 1972, together with the sum of \$29,941.68 for disbursements for the same period.

The firm of Jaeckle, Fleischmann & Mugel of Buffalo, New York, were employed as attorneys for the Trustee pursuant to Order dated July 24, 1972 of the United States District Court for the Western District of New York. By Order of said Court dated June 22, 1973, payment on account for services rendered was made in the amount of \$40,000.00, together with the sum of \$5,272.23 for disbursements. Thereafter, said firm was permitted by the Court to terminate its representation of the Trustee on December 16, 1974; and after due notice and hearing, Hon. Harold P. Burke, United States District Judge, authorized the payment to the firm of Jaeckle, Fleischmann & Mugel of the additional sum of \$150,000.00 in full payment for services rendered as attorneys, together with the additional sum of \$9,181.72 for unreimbursed disbursements, by Order of said Court dated December 30, 1976.

Simultaneously with the termination of the services of Jaeckle, Fleischmann & Mugel, the Trustee was authorized to employ the firm of Johnson, Reif and Mullan, P. C. of Rochester, New York, as attorneys, by Order of Hon. Harold P. Burke, United States District Judge, dated December 16, 1974. They continue to represent the Trustee.

Substantive Consolidation:

In the month of July, 1972, six separate proceedings were commenced under Chapter X of the Bankruptcy Act. On July 13, 1972, Frank G. Raichle was appointed Trustee of Stirling Homex Corporation by Order of the United States District Court for the Western District of New York. On July 21, 1972, Frank G. Raichle was also appointed Trustee of U. S. Shelter Corporation; and on July 27, 1972, he was appointed Trustee of U. S. Home Management Service, Inc., Progressive Housing Corporation, Clay Development Corporation and Kabeth Properties, Inc., by Orders of said Court.

Upon investigation of the activities of all said corporations, the following became clear. All of the shares of stock of the five corporations that commenced Chapter X proceedings on July 21, 1972 and July 27, 1972 were owned and registered in the name of Stirling Homex Corporation. The officers and directors of the five corporations were all employees of Stirling Homex Corporation. The five corporations maintained no independent offices or places of business from that of Stirling Homex Corporation. At all times, the officers and directors of the five subject corporations functioned as the management of the parent, Stirling Homex Corporation, and not as independent officers and directors of the five other corporations. The five corporations employed and retained no employees. Most of the accounting for the subject corporations was done on a consolidated basis with Stirling Homex Corporation.

The activities of the five corporations related exclusively to the activities of the parent, Stirling Homex Corporation. The business of U. S. Shelter Corporation was to provide financing on behalf of its parent, Stirling Homex Corporation, for customers of the latter who had purchased or were to purchase housing modules produced by Stirling Homex Corporation. The business of U. S. Home Management Service, Inc. was to manage, maintain and operate real estate property for its parent, Stirling Homex Corporation, and for customers of Stirling Homex Corporation who had purchased housing modules produced by Stirling Homex Corporation. The business of Progressive Housing Corporation was to enter into one construction contract to do site work and install modules for a customer of its parent, Stirling Homex Corporation. The business of Clay Development Corporation was to enter into at least two construction contracts to do site work and install modules for a customer of its parent, Stirling Homex Corporation. The business of Kabeth Properties Inc. was to enter into at least four construction contracts to do site work and install modules for customers of its parent, Stirling Homex Corporation. Kabeth also held formal title to approximately 430 acres of raw land in Clay, New York, which was to have been developed by its parent, Stirling Homex Corporation. The creditors of the five subject corporations had prior knowledge of the relationship between said corporations and their parent, Stirling Homex Corporation, and, in fact, the most significant ones obtained formal guarantees from Stirling Homex Corporation for the obligations of said corporations.

It, therefore, became clear to the Trustee that to continue to maintain the separate corporate identities of the five subsidiary corporations would serve no useful purpose. Furthermore, as Trustee for the separate corporations, the Trustee was confronted with intercompany transactions, claims and receivables of such number and complexity that the administration of the assets and liabilities, and the accounting therefor, of the Stirling Homex complex in reorganization would be greatly facilitated if the same were administered as a single debtor entity.

A Petition dated June 10, 1975 was filed by the Trustee in the United States District Court for the Western District of New York seeking to substantively consolidate U. S. Shelter Corporation, U. S. Management Service, Inc., Progressive Housing Corporation, Clay Development Corporation and Kabeth Properties, Inc., Debtors, into Stirling Homex Corporation, Debtor, to the end that the assets, liabilities and creditors of all of said debtor subsidiary corporations shall be considered as the assets, liabilities and creditors of a single and common entity; to wit, Stirling Homex Corporation,

and that the separate proceedings under Chapter X of the Bankruptcy Act be consolidated into one proceedings. By Order of June 16, 1975, the Court fixed a hearing date of July 14, 1975 and directed the manner in which service of notice thereof should be made upon the parties of interest as designated by said order. Chemical Bank, The Chase Manhattan Bank, N. A. The First National Bank of Chicago, Marine Midland Bank-Western, Marine Midland Bank-Rochester, Union Commerce Bank, Lincoln Rochester Trust Company, First National State Bank of New Jersey and Union Planters National Bank of Memphis subsequently filed objections and submitted lengthy interrogatories dated July 16, 1975. The Trustee objected to said interrogatories, however, proceeded to answer same by documents dated August 14 and August 18, 1975. An objection was also filed by Clay Land Corporation; however, it was subsequently withdrawn.

On July 14, 1975, upon the consent of all persons who appeared, the hearing was adjourned to July 28, 1975, when the matter was further adjourned. By Court Order of May 20, 1976, the matter was rescheduled for hearing on June 14, 1976, which Order also directed the manner in which notice of said rescheduling of hearing should be given and the parties to whom such notice should be given, and the matter was further adjourned to June 28, 1976, when testimony was taken and evidence received upon such hearing, and there was no objection to said application. The various banks had withdrawn their previous objections as an element of the settlement between them and the Trustee.

By Order dated June 29, 1976, Hon. Harold P. Burke, United States District Judge, granted the Trustee's motion and the corporations, together with the separate proceedings, were substantively consolidated. In light of the consolidation, the use of the term "Debtor" throughout this report refers to Stirling Homex Corporation and its consolidated subsidiaries.

Assets of Debtor and Disposition by Trustee:

Module Sales - As of the date of the filing of Debtor's Petition under Chapter X, there were 10,091 uninstalled modules on hand, located in over seven storage areas in four states. Of that number, customers of Debtor had possession of 832 modules, therefore leaving 9,259 modules to be sold by the Trustee. That number of modules represented over 2.9 million square feet of housing and, if the modules were placed end to end and side to side in one location, they would cover an area of approximately 57 acres.

For approximately six months, a committee formed by the Banks attempted to sell the inventory of modules on hand. At that time, the Banks claimed a security interest in the modules and the proceeds from the sale thereof. In February of 1973, the efforts of the committee having come virtually to a halt without selling a single module, the Trustee and his staff negotiated the most significant sale of modules. The sale included 2,040 modules for a purchase price of \$2.1 million and included all of the modules located in the Akron, Ohio, storage areas. After due notice and hearing, the sale was authorized by Court Order dated February 15, 1973.

The terms of sale of the modules became standardized at an early stage. The total purchase price was due on the date the purchase agreement was executed; however, payment schedules have been used on purchase agreements for large numbers of modules. The modules have been sold "where is, as is" with no representations regarding their condition. The purchaser has been responsible for shipping the modules from the storage area to the construction site by a specified deadline. If said deadline was not met, a storage charge applied. All of the elements required to consummate a sale, from the point of initial negotiation to the ultimate loading of the modules for shipment, have been accomplished by the Trustee's staff in Avon, New York.

Contracts involving a purchase price in excess of \$250,000 have been regarded as "bulk sales" and, therefore, for each of such sales, the Trustee has obtained a separate Court Order authorizing same. Contracts involving a purchase price below \$250,000 have been considered sales in the "ordinary course of business". The Trustee was authorized to proceed with the latter in the United States District Court Order dated July 13, 1972 appointing him Trustee.

As of March 31, 1977, a total of 8964 modules have been sold under approximately 382 separate contracts. The total proceeds from the sale of modules to March 31, 1977 exceed \$10.4 million. A total of 824 modules currently remain at Debtor's Avon storage yard, 564 of which have been sold and 260 of which remain to be sold. Debtor has written off a total of 35 modules of the original 9259 modules to be sold.

Sales of Other Personal Property and Services - From time to time, the Trustee has sold a great number of other items which were not necessary in the operation of Debtor's business, including raw materials, equipment, furniture and fixtures. Such items were sold with prior notice to the Securities and Exchange Commission and pursuant to individual Court Orders when required. As of March 31, 1977, the total proceeds from the sales of such items exceeds \$1.2 million. Debtor still owns raw materials, equipment, furniture and fixtures in the approximate value of \$500,000.

The Trustee's staff in Avon has generated additional proceeds from operations coincident with the sale of modules. Trailers and other equipment required to ship and install the modules have been rented, installation advice has been provided for a fee, and storage charges have been collected.

Real Property - Debtor's office and factory are located on 57 acres of land in Avon, New York. They consist of a brick and steel office building and an adjoining manufacturing facility having an aggregate area of approximately 147,000 square feet which were initially constructed in 1967, with additions completed in 1971. The Trustee is currently attempting to sell the subject office and manufacturing facility for an asking price of \$1.5 million.

Debtor owned a 53,173 square foot building, located on approximately six acres of land in the Town of Avon, New York, and commonly referred to as "Plant II". Prior to the filing of the Chapter X Petition, the subject property was utilized as a cabinet and paint shop and was the location for Debtor's architectural and personnel departments. The subject property was purchased in 1969 for \$150,000 and Debtor had made substantial improvements subsequent thereto. The Trustee was successful in obtaining a purchase offer dated July 26, 1974 which offered \$350,000 for the property. Said offer was in excess of two current Court authorized appraisals which the Trustee had obtained. Upon a hearing had in the United States District Court for the Western District of New York, based on a Petition and Notice filed by the Trustee, an Order was obtained dated August 19, 1974 authorizing the Trustee to sell the subject property for \$350,000, free and clear of all liens and encumbrances. The transaction was closed on October 24, 1974. There were two liens on the property, including a mortgage with a principal due of \$34,244.71 and a mechanic's lien in the sum of \$7,197.90. Pursuant to the Court Order, the Trustee paid both of said amounts and received and recorded appropriate satisfaction pieces.

When Stirling Homex was formed in 1968, three of its subsidiaries owned vacant land in the Town of Clay, New York. Additional parcels were acquired and several parcels were sold, leaving a balance of approximately 435 acres at the date of the Chapter X Petition. In addition, 43 acres were owned in Morgantown, West Virginia, 1.6 acres in Brockport, New York, and 46.6 acres in Jamestown, New York, all of which had been acquired for future housing development sites. The Trustee has sold five relatively small parcels of vacant land. The first sale to St. John's Roman Catholic Church of Clay, New York, covered less than 1 acre owned by Kabeth Properties, Inc. and located in the Town of Clay, New York. After due notice and hearing, the United States District Court authorized the subject sale by Order dated December 10, 1973 and the sale was consummated for \$4,500 in February, 1974.

The second sale of approximately 43 acres located in Morgantown, West Virginia, was authorized after due notice and hearing by Order of the United States District Court dated May 13, 1974. In July, 1974 the property was sold to Morgantown Community Association, Inc. by Aquarius Development Corporation for \$70,000. A judgement lien in favor of William Moreland against the property in the amount of \$4,183, and brokerage fees and other expenses in connection with the sale, resulted in net proceeds of \$59,676.49.

A third sale to Mutual Tennis, Inc. of approximately 6.77 acres located in the Town of Clay, New York, was authorized after due notice and hearing by Order of the United States District Court dated April 15, 1975. This sale was consummated on July 21, 1975 for \$81,240, less a brokerage commission of \$8,124.

After due notice and hearing, an Order of the United States District Court dated May 28, 1975 authorized the sale of 5.023 acres located in the Town of Clay, New York, for \$62,750 or approximately \$12,500 per acre. The fourth sale closed on August 21, 1975 and included a 1.5 acre portion of the 5.023 acres. The sale was to Edmiston Properties, Inc. for \$24,000, or approximately \$16,000 per acre. The purchaser defaulted on the sale of the remaining acreage.

The fifth sale to Lansing-Clay, Inc. of approximately 13.7 acres located in the Town of Clay, New York, closed on December 10, 1975 for \$72,000 and was authorized after due notice and hearing by Order of the United States District Court dated May 28, 1975.

The latter three parcels represented the major portion of parcels acquired by the Trustee in mortgage foreclosure proceedings in 1974, described at page 11 of this Report. There are two remaining parcels to be sold of the land so acquired, with a combined acreage of 4.6 acres. The other real estate remaining to be sold includes the main office and manufacturing facility (147,000 square feet) located on 57 acres of land in Avon, New York, which Debtor owns free and clear of liens and encumbrances. In addition, Debtor still owns vacant land of approximately 433 acres in the Town of Clay, New York; 46.6 acres in Jamestown, New York; and 1.6 acres in Brockport, New York.

Debtor maintained offices in New York City, Washington, D. C., Akron, Ohio and Jackson, Mississippi. Two of said offices were closed in the months preceding the filing of the Chapter X Petition and the other two were closed shortly thereafter. In 1971, Debtor leased 100 acres of land in Gulfport, Mississippi, where it planned to construct a manufacturing plant for the production of housing modules. Although some preliminary land work was done, no physical improvements were made to this property. The Trustee terminated the lease immediately after his appointment.

Erie Grandview Site and Modules - Prior to the filing of the Chapter X Petition, Debtor had entered into an agreement with the Housing Authority of the City of Erie, Pennsylvania, dated March 22, 1972, which called for the construction of housing units consisting of 276 modules on land which Debtor had acquired in early 1971. The Trustee determined that Debtor could not perform its obligation under the subject contract. The Trustee was successful in obtaining an offer from Hardner-Doyle Company of Erie, Pennsylvania, to purchase the land and modules assigned to the project. Hardner-Doyle was the site contractor for the project retained by Debtor prior to the filing of the Chapter X Petition.

Under the terms of the offer, Hardner-Doyle, or its designee, would take over the entire project paying the Trustee \$240,000 for the land (consisting of 6.3 acres), the 276 modules constructed for the project, the plans, specifications, drawings, permits and approvals for the construction of the units and an assignment of the contract between Debtor and the Housing Authority of the City of Erie. In addition, as part of the consideration for the sale, Hardner-Doyle Company would release its claim, in excess of \$114,500 against Debtor, which claim accrued for work performed for Debtor on the subject project before the filing of Debtor's Petition.

After due notice and hearing, Hon. Harold P. Burke, United States District Judge, by Order dated January 22, 1973, authorized the sale and the transaction was consummated shortly thereafter.

CLAIMS AND CAUSES OF ACTION IN FAVOR OF DEBTOR

Tax Refunds:

In August, 1972, the Trustee, through his auditors, applied for a refund of all Federal income taxes paid by Debtor, by virtue of the carryback of the 1972 net operating loss. Thereafter, on August 22 and September 6, 1972, refunds totalling \$3,077,571.00 in taxes, plus \$4,718.37 interest, were received from the United States Treasury Department. In March of 1977, the Trustee received interest on the prior refund in the amount of \$87,367.10. This figure represented the difference between the amount allowed of \$168,042.16 and the amount offset for interest and payroll taxes claimed against Debtor.

In August, 1972, claims for refund of New York State Franchise Taxes were filed. Thereafter, an examination of the tax returns was made by a field auditor from the State. Based upon his examination, total overpayments of tax plus interest for the fiscal years July 31, 1969, 1970 and 1971 were determined to be \$316,958.02. Of this amount, the State of New York set off \$313,664.31 in payment of taxes and interest claimed to be due for Franchise tax (fiscal 1972), License Fee (fiscal 1971), Income Tax Withheld (1972) and Sales Tax. A net check was received in May, 1973 for \$3,293.71. The Trustee objected to the subject setoff and after due notice and hearing on April 26, 1976 in United States District Court the matter was submitted for decision on written memoranda. On July 15, 1976, Hon. Harold P. Burke, United States District Judge, ruled that the unilateral setoff by the State was a violation of the Order of said Court dated July 13, 1972 appointing the Trustee and that the setoff was invalid and not binding on Debtor. However, Judge Burke also ruled that the refund be held by the State of New York pending and subject to the determination of the Court of the validity of the claim of the State of New York for sales and use taxes which is discussed at another place in this report.

Condemnation Action:

When the Trustee was appointed in July of 1972, there was pending before the Court of Claims of the State of New York a claim of Kabeth Properties, Inc. against the State of New York arising out of the appropriation by the State of a portion of Kabeth's land situate in the Town of Clay, New York. The claim was designated Claim No. 51422 and resulted from the 1969 taking by the State for highway purposes of approximately 31.5 acres of land, part of a large tract of approximately 145.3 acres owned by Kabeth. The State offered \$121,450 for the parcel. Kabeth claimed damages of \$3,226,200 both for the taking and consequential damages to the remainder of the land owned by Kabeth.

Prior to the petitions under Chapter X, Debtor's counsel prepared and filed pleadings, arranged for expert appraisals, participated in extensive procedural motions and appeals by the Attorney General of New York from procedural determinations and had prepared extensively for trial of Kabeth's claim in the Court of Claims. The claim was scheduled for trial on October 2, 1972 in the Syracuse District of the Court of Claims.

By Court Order dated October 2, 1972, Hon. Harold P. Burke, United States District Judge, authorized the Trustee to prosecute Kabeth's claim against the State of New York and to retain special counsel and pay said counsel a fee equal to one-third of any recovery in excess of \$160,000 up to a recovery of \$500,000 and 10% of any such recovery in excess of \$500,000, except that, in the event it became necessary for said counsel to prosecute an appeal, counsel's fee on any recovery in excess of \$500,000 shall be increased to 12.5%, said counsel to bear the cost of all appraisal fees and other expenses pertaining to the proceedings, except that the fees of expert witnesses shall be paid from the recovery, the amount of such witness fees reducing the recovery upon which counsel's contingent fee shall be computed.

Trial was held before Hon. John P. Gualtieri, Judge of the Court of Claims. In a decision dated July 9, 1973, Judge Gualtieri ruled that supplemental appraisals must be filed before the case could be finally decided and, therefore, a new trial was required. Pursuant to such Order, supplemental appraisals were submitted by both sides in December of 1973 and a new trial was held commencing on March 26, 1974 before Hon. Robert M. Quigley, Judge of the Court of Claims. The total record of that trial and a transcript of the trial before Judge Gualtieri, together with the proposed Findings of Fact and Conclusions of Law, legal briefs and exhibits were received by the Court, in toto, on January 9, 1975.

By decision dated February 28, 1975, Judge Quigley awarded the Trustee the sum of \$703,700, plus interest in the sum of \$268,344.27, a total of \$972,044.27, for all damages, direct and consequential, resulting from the appropriation by the State. Judgement therefor was entered on September 23, 1975.

The Court of Claims decision is presently under appeal by the State of New York and should be argued in the near future. The State is arguing that the Court of Claims judgement should be modified by reducing it to the sum of \$300,000, plus interest.

A claim has been made against a portion of the proceeds by First National Bank of Rochester. The claim is based on an alleged assignment by Kabeth Properties, Inc., dated December 30, 1970, of up to \$250,000 from any award received on the subject condemnation action. The validity of the alleged assignment is being contested by the Trustee. On November 19, 1976, First National Bank of Rochester brought an action for declaratory judgment in the United States District Court for the Western District of New York to determine the validity of the alleged assignment. The outcome of said action is still undetermined.

Real Property Tax Proceeding:

The Trustee brought two actions seeking a review of the real estate taxes assessed for the years 1974 and 1975, respectively, against parcels owned by Debtor in the Town of Avon. Debtor's home office and primary production plant are located on the subject parcels. The result of such actions was an Order dated August 9, 1976 by Hon. Robert J. McDowell, Justice of the Supreme Court of the State of New York, reducing the assessments in question and ordering a combined refund from the Avon Central School District, the County of Livingston and the Town of Avon of \$30,664.38. The assessed valuation of the property in question was reduced from \$500,500 to \$350,000, which not only has a prospective effect in terms of lowering taxes from 1976 forward, but also will make the subject property more attractive to prospective purchasers.

Retainages:

There were three cases where the Trustee was successful in retrieving some portion of amounts retained by customers of Debtor on projects which were substantially complete prior to the filing of the petition under Chapter X.

The first case related to a contract with Rochester Institute of Technology (RIT) dated May 14, 1971, wherein Debtor agreed to construct 275 dwelling units on the campus of RIT located in Rochester, New York, for the sum of \$4,820,000. The Trustee claimed that RIT owed Debtor's estate the sum of \$61,796.88 and RIT claimed offsets amounting to \$78,425. After extensive negotiation, a compromise was reached wherein RIT would pay over to the Trustee the sum of \$19,434 and each party would exchange general releases. After due notice and hearing, the subject compromise was authorized by Order of the United States District Court dated November 11, 1974 and consummated shortly thereafter.

The second case related to three projects constructed in Worcester, Massachusetts, which were purchased by the Worcester Housing Authority. The Trustee claimed a combined amount of \$29,062 plus interest. The Housing Authority claimed offsets of \$46,293.84. After extensive negotiation, a compromise was reached wherein the Housing Authority would pay over to the Trustee the sum of \$10,000 and each party would exchange general releases. After due notice and hearing, the subject compromise was authorized by Order of the United States District Court dated July 28, 1976 and consummated shortly thereafter.

A third case related to a contract with the University of Pittsburgh dated October 20, 1971, wherein Debtor agreed to construct student housing suitable for 300 students at the Bradford, Pennsylvania, campus of the University for the sum of \$1,507,191. The Trustee claimed that the University owed Debtor's estate \$130,100 and the University claimed offsets amounting to \$166,659.45. After extensive negotiation, a compromise was reached wherein the University would pay over to the Trustee the sum of \$10,000 and each party would exchange general releases. After due notice and hearing, the subject compromise was authorized by Order of the United States District Court dated June 25, 1974 and consummated shortly thereafter.

M. Thurston Little Matter:

In the course of the Trustee's investigation of the financial affairs of Debtor, it was learned that a former employee of Debtor, M. Thurston Little, by deed dated June 29, 1972, and recorded July 20, 1972, attempted to transfer approximately 297 acres of real property located in Alcorn County, Mississippi, originally purchased by Debtor in 1970, to one W. H. Tatum, Sr. for the sum of \$98,000, which sale resulted, following closing adjustments and mortgage assumption, in net proceeds of \$58,488.36.

On October 31, 1972, upon application by the Trustee, the United States District Court for the Western District of New York directed M. Thurston Little to show cause why he should not surrender possession to the Trustee of various items of corporate property of the Debtor, including files regarding the subject sale, and the net proceeds of the sale in the amount of \$58,488.36. A hearing was held and by Order dated February 14, 1973, said Court ordered M. Thurston Little to turn over to the Trustee specified items of personal property, all documents and records pertaining to the subject sale of real property and the net proceeds of \$58,488.36. M. Thurston Little complied with said order and the amount of \$58,488.36 was deposited by the Trustee in a separate interest-bearing account. The February 14, 1973 Order also permitted M. Thurston Little to file an application with the Court to determine the validity of a lien claimed by him on the proceeds of the sale for amounts allegedly owed him by Debtor. By application dated May 28, 1973, M. Thurston Little filed an application to enforce his alleged lien and the Trustee submitted an Answer thereto.

In March of 1974, discussions commenced with the attorney for M. Thurston Little and W. H. Tatum, Sr. to ascertain the facts and circumstances surrounding the sale of the real property, to review the adequacy of the consideration for the sale and the merits of the claim asserted by M. Thurston Little. On or about October 3, 1975, during these negotiations, W. H. Tatum, Sr. commenced a proceeding in the Chancery Court of Alcorn County, Mississippi, to remove cloud on title to the real property in question, which cloud resulted from the Trustee's assertions that insufficient consideration had been paid for the subject property. That proceeding was remanded, upon Trustee's application, to the United States District Court for the Northern District of Mississippi, Eastern Division, on or about October 27, 1975.

Following completion of the Trustee's investigation of the facts and circumstances involved, including his study of four separate appraisals of the real property in question, an assessment of the potential for success of the proceeding commenced by W. H. Tatum, Sr. to clear cloud to title and of any proceeding which might be commenced by the Trustee to set aside the sale in question, and upon a consideration of the cost that would be incurred by Debtor in such litigation, the Trustee applied to the United States District Court on December 1, 1975 for authorization to compromise all of the matters in question. The terms and conditions of the compromise were that W. H. Tatum, Sr. was to pay to the Trustee the additional sum of \$17,600 and the Trustee would execute and deliver a quitclaim deed on behalf of Debtor for any interest it may retain in the real property. Furthermore, M. Thurston Little would withdraw any and all claims which he filed against Debtor and specifically withdraw any claim to the proceeds of \$58,488.36. Finally, all other proceedings brought by M. Thurston Little and W. H. Tatum, Sr. would be discontinued and general releases would be exchanged by all the parties.

After due notice and hearing, the United States District Court authorized the subject compromise by Order dated December 23, 1975 and the compromise was subsequently consummated.

Mortgage Foreclosures:

In 1969, Hollywood Park II, Inc., a wholly-owned subsidiary of the Debtor, sold two parcels of land, taking back, in each case, a purchase money mortgage. The greater portion of the land was sold subject to the lien of existing first mortgages.

On April 5, 1974, as a result of foreclosure proceedings instituted by Rainew Realty Corporation, which had acquired two of the first mortgages, the Trustee purchased approximately 9.6 acres at the "upset price" of \$55,920 covering unpaid principal and interest on the mortgages, unpaid real estate taxes, advertising, costs, etc. This purchase was made to protect Debtor's interest in one of the purchase money mortgages referred to above in the amount of \$302,000. After due notice and hearing, the purchase was authorized by Order of the United States District Court dated February 25, 1974.

A similar foreclosure proceeding was instituted by William A. Buecheler and Frances M. Buecheler on the other parcel of land and on October 1, 1974, the Trustee purchased the property for the "upset price" of \$60,556 to protect Debtor's interest in a purchase money mortgage with a balance due of \$241,624. This purchase was also authorized, after due notice and hearing, by Order of the United States District Court dated September 23, 1974.

Former Officers and Directors:

The United States District Court for the Western District of New York, by Order dated December 1, 1976, authorized the Trustee to institute an action against David Stirling, Jr., William G. Stirling, Harold M. Yanowitch, Edwin G. Schulz, Frank Csapo and Charles W. Marshall, former officers and directors of Debtor, demanding that the defendants account to the Trustee for all profits made by them on the sales of Debtor's stock, for all monies unlawfully paid for the use and benefit of labor leaders, for all dividends declared on the preferred stock of Debtor while Debtor was insolvent and to pay over to the Trustee such portions of salaries paid to said defendants in excess of the reasonable value of their services. The Trustee commenced said action by a summons and complaint dated January 19, 1977 and filed in the United States District Court for the Western District of New York. The extent of the recovery, if any, resulting from said action is undetermined at the present time.

CLAIMS AGAINST DEBTOR AND DISPOSITIONS TO DATE

Claims Filed by Creditors:

By Order dated December 11, 1972, the Court fixed the time and prescribed the manner of filing and allowing proofs of claim of all creditors of Debtor. The Order provided that all claims be filed by February 19, 1973 unless the claims were based upon the rejection of an executory contract subsequent to January 19, 1973, in which case the claim was required to be filed within 30 days of the date of mailing of notice of such rejection. The Trustee prepared the required notices and caused them to be mailed to all known creditors by January 5, 1973. He also caused such notices to be published in January, 1973 in The Wall Street Journal and in the Rochester Democrat and Chronicle.

The Trustee has received a total of 968 proofs of claim in the total face amount of \$99,477,435.08. Aside from the claims of the Banks, which were originally filed as secured claims, there were seven secured claims having a face amount of approximately \$243,000. There were 559 claims from former employees for wages and expenses having a face amount of \$2,858,220.93. There were 25 claims filed by federal, state and local taxing authorities having a face amount of \$1,571,623.70. There were seven claims filed by shareholders containing allegations that Debtor made false and misleading statements upon which the claimants relied when purchasing Debtor's stock. The face amount of such shareholder claims was \$30,021,868.39; however, a shareholder class action claim in the amount of \$30 million has been disallowed by Court Order. The claims are more particularly summarized in Exhibit III attached hereto.

The Trustee, his staff and attorneys have audited substantially all of the filed claims, resulting in many claims being reduced, withdrawn or disallowed. The current approximate aggregate value of claims is \$46.6 million.

The following are the most significant claims filed by creditors:

Bank Claims:**A 167**

Chase Manhattan Bank	\$ 4,102,659.53	
Chemical Bank (For itself and as agent for the other Banks) - Stirling Homex Corp.	19,993,182.75	(Duplication of \$15,902,305.52)
U.S. Shelter Corp.	15,937,640.20	
First National Bank of Chicago	4,120,995.08	
First National Bank of New Jersey	1,292,667.39	
Lincoln Rochester Trust Company	2,386,032.89	
Marine Midland Bank-Rochester	1,240,382.67	
Marine Midland Bank-Western	2,469,699.39	
Union Commerce Bank	1,641,107.24	
Union Planters National Bank	825,015.49	

Employee Contract Claims in Excess of \$100,000:

Robert S. Agnello	\$ 176,665.00	(Withdrawn)
Gary L. Hammons	159,330.28	(Reduced to \$2,596.14)
Charles Luna	171,728.22	(Reduced to \$138,947.03)
Arthur Rosfeld	106,231.13	(Reduced to \$72,423.15)
Thomas Santa Lucia	109,145.72	(Reduced to \$25,000.00)
Harry Sinden	116,665.00	(Withdrawn)
David Stirling, Jr.	281,333.34	(Disallowed)
William G. Stirling	281,333.34	(Disallowed)
Wilbur P. Trammell	148,573.57	(Reduced to \$47,500.00)
James G. Wasson	136,230.73	(Reduced to \$14,026.59)
Harold M. Yanowitch	225,000.00	(Disallowed)

Other Claims in Excess of \$100,000:

Afcon Construction	\$ 294,808.00	(Reduced to \$36,088.31)
Akron Metropolitan Housing Authority	166,243.12	(Withdrawn)
Roy W. Anderson, Jr., Inc.	205,407.87	(Reduced to \$85,000.00)
Empire Pipeline Corp.	148,611.24	(Reduced to \$55,000.00)
Jones & Goldberg Shareholder Claims	30,000,000.00	(Disallowed)
New York State (Sales Tax)	268,599.88	
North American Car Corporation	420,618.14	(Reduced to \$15,266.31)
State of Ohio (Personal Property Tax)	1,166,062.05	(Disallowed)
Route 57 & 31 Development Corp.	235,000.00	(Disallowed)
David and William Stirling	123,849.00	(Disallowed)
Summit Metropolitan Housing, Inc.	1,614,710.00	(Reduced to \$577,019.12)
Ti-Bert Systems, Inc.	365,498.38	(Withdrawn)
Travelers Indemnity Company	5,072,090.00	
University of Pittsburgh	123,933.73	(Withdrawn)
Walston Millwright & Const. Co.	179,946.78	(Withdrawn)

Bank Claims:

Early in 1972, Stirling Homex Corporation entered into a Revolving Credit Agreement, Security Agreement and Assignment, and Pledge Agreement, all dated as of January 24, 1972, with Chemical Bank, The Chase Manhattan Bank, N. A., First National Bank of Chicago, Marine Midland Bank-Western, Marine Midland Bank-Rochester, Lincoln Rochester Trust Company, Union Commerce Bank, First National State Bank of New Jersey and Union Planters National Bank of Memphis. (Hereinafter referred to as the "Banks".) At the same time, U. S. Shelter Corporation entered into a Credit Agreement, dated as of January 24, 1972, with Chemical Bank, individually and as agent for all of said Banks. Financing statements evidencing these agreements were filed in the proper New York State offices more than four months prior to the time the subject debtors filed their petitions for reorganization under Chapter X of the Bankruptcy Act. Pursuant to said credit arrangements and agreements, the aforementioned banks purported to take a security interest in all goods owned by Stirling Homex Corporation and held for sale or lease in the ordinary course of its business, or furnished or to be furnished by Stirling Homex Corporation under contracts of service, including raw materials, work in process or materials, and all goods of like kind or type. The security agreement also purported to give a security interest in all invoices, contracts, claims, instruments, leases, agreements on account, whether then existing or thereafter arising, evidencing or representing indebtedness due or to become due to Stirling Homex Corporation for its own account on account of goods sold or leased or to be sold or leased by Homex, or services rendered or to be rendered by Homex. Pursuant to said credit arrangements, the aforementioned Banks continued existing loans to Stirling Homex Corporation and U. S. Shelter Corporation in the approximate total sum of \$38,000,000.

In February of 1973, said Banks filed proofs of claim against Debtors in the total aggregate amount of \$54,010,808.08. There was duplication in said claims to the extent of \$15,937,640.20, therefore reducing the aggregate claims to approximately \$38,070,000. The Banks claimed a security interest in the inventory and receivables of Debtor, which constituted the most valuable assets of Debtor.

On or about May 6, 1975, the Trustee filed objections to the claims of the Banks. His objections in summary were that the agreements were obtained within one year of adjudication and that the perfection of the Banks' security interest occurred within four months of adjudication for a past due consideration while the debtors were in financial straits and hence was a void or voidable preference.

During the pre-hearing discovery proceedings on the claims and the objections filed thereto, negotiations occurred between the Trustee and the Banks seeking a compromise of the claims and objections, which negotiations resulted in the Trustee and the Banks executing an Agreement, subject to Court approval, dated as of March 31, 1976.

The agreement required the Banks to waive their security interest, if any, in the assets of Debtor and to participate in distribution from Debtor's estate in the same proportion as general unsecured creditors. The agreement also called for the Banks to withdraw their objections to a consolidation of the Chapter X proceedings of Stirling Homex Corporation and its subsidiary corporations in accordance with a petition filed by the Trustee on or about June 10, 1975. In return for the above, the Trustee would make an immediate interim payment on account to the Banks of \$7,000,000, representing an early distribution of a portion of their expected dividend on their proofs of claim. The Trustee had in excess of \$12.3 million on deposit with Marine Midland Bank as of March 31, 1976 and the sum of the Banks' proofs of claim represented approximately 77% of the general unsecured proofs of claim filed.

By Court Orders dated May 15 and May 20, 1975, the claims of the Banks and others were referred to the Bankruptcy Court and the latter was directed to hear and report on the same with findings and recommendations. The Trustee, by Petition dated April 5, 1976 made application to Bankruptcy Court for a hearing seeking approval of the aforementioned Agreement. The Bankruptcy Judge, by Order of April 5, 1976, fixed May 10, 1976 for a hearing upon said application and directed the time and manner of notice to interested parties pursuant to Rule 10-209. Proper service of the petition of the Trustee dated April 5, 1976, the Order of the Bankruptcy Court of April 5, 1976 and a copy of the agreement were made upon all parties directed by the Bankruptcy Court to be notified, which included creditors and stockholders of record. The Securities and Exchange Commission was advised of the nature and extent of the proposed agreement and offered no objection to its approval or implementation. There were no objections filed by any party on or before the hearing date of May 10, 1976.

Bankruptcy Judge Edward D. Hayes found that the compromise agreement when effective would substantially increase the amount to be received by the unsecured creditors on their claims and that since the Banks will receive only what they would receive as an unsecured creditor, the Trustee would accomplish the most he could expect from the objections filed by him.

Furthermore, Judge Hayes found that the agreement, when effective, required the Banks to withdraw their opposition to the Trustee's pending application for consolidation of Stirling Homex Corporation and its subsidiary

corporations. Said consolidation was important to the Trustee because it would avoid a tremendous amount of litigation, would expedite the Trustee's administration of all the Debtor's estates, would relieve the Trustee of the financial and administrative burden of preparing separate financial accountings and analyses of the various Debtor corporations and would otherwise permit a joint administration and accounting of the various Debtors' estates. The compromise would also avoid the necessity of litigating the apportionment of administrative expenses between secured and unsecured creditors.

On the basis of the above findings, Judge Hayes recommended to the United States District Court for the Western District of New York that the Trustee be permitted to compromise and settle his objections to the claims of the Banks in accordance with the agreement dated March 31, 1976 and executed by him and the Banks and that the Trustee be authorized and directed to implement the agreement in accordance with its terms and conditions.

The Trustee, by Petition dated May 17, 1976, made application to the United States District Court for the Western District of New York to confirm the Findings and Recommendations of Hon. Edward D. Hayes, Bankruptcy Judge, and by Court Order dated May 20, 1976 a hearing date of June 14, 1976 was set, which Order also directed the manner in which service of notice thereof should be made upon the parties to the proceedings as designated by said Order; said hearing having been subsequently adjourned to June 28, 1976 and on said date, there being no objection, the Court granted the Trustee's motion and said Findings and Recommendations were confirmed and the settlement agreement was approved in all respects. The resulting Court Order of June 29, 1976 further directed the Trustee to make the payment to the Banks described in the subject Agreement and allowed as general unsecured claims the claims filed by the Banks. Pursuant to said Court Order, on August 12, 1976, the Trustee paid over on account to the Banks the sum of \$7,000,000.

Travelers Indemnity Claim:

Prior to the filing of Debtor's Chapter X Petition, whenever a performance or payment bond was required on a project, Debtor purchased same from the Travelers Indemnity Company. At an early stage in the proceedings, the Trustee determined that he could not continue and complete the work on the various projects in process and, therefore, the subcontractors who had done work and not been paid, together with the owners of said projects, looked to Travelers pursuant to said payment and performance bonds.

On or about February 14, 1973, Travelers filed unliquidated claims against Stirling Homex Corporation and many of its subsidiaries. The claims were unliquidated because many of the projects were to take years to complete and there was no way to accurately estimate the final net amount Travelers would be required to advance. There are to this date a few open items, and the claims have not as yet been fully audited by the Trustee's staff; however, the net amount expended by Travelers to date is approximately \$5,072,090. The contract proceeds that Travelers has received upon the completion of the various projects have been deducted to arrive at this net figure. The remaining open items are not expected to exceed \$100,000. In addition, there remains a dispute between Travelers and the Trustee over the ownership of a progress payment in the amount of \$268,048 received from the New Jersey Educational Facilities Authority by the Debtor prior to the filing of its Chapter X Petition and deposited into the account of the Trustee following his appointment. By application dated February 24, 1975, the Trustee asked the Court to direct the manner in which and the time within which the claim of Travelers shall be liquidated and Travelers filed a Cross-Petition for Determination of Ownership of Fund dated March 14, 1975 relating to said proceeds. On the hearing date, March 24, 1975, it was agreed that the cross-claim for \$268,048 be severed from the motion to liquidate. It is expected that the Trustee and Travelers will be able to stipulate to the facts and submit it to the Court for decision in the near future. Travelers' contention is that the payment in question is subject to the Trust Fund provisions of the Lien Law of the State of New Jersey and is, therefore, available to pay the claims of subcontractors and trade creditors on the subject project.

Many subcontractors and owners filed Proofs of Claim against the Debtor, as well as pursuing their rights against Travelers. The continuing audit of the Travelers claim has resulted in the elimination of such duplication in the approximate amount of \$1.2 million. The most significant of those are the claims of Ti-Bert Systems, Inc. in the sum of \$365,498.38, Walston Millwright & Const. Co. in the sum of \$179,946.78 and \$500,000 of the claim of Summit Metropolitan Housing originally filed in the sum of \$1,614,710.

Summit Metropolitan Housing, Inc. and Akron Metropolitan Housing Authority Claims:

On or about February 20, 1973, Akron Metropolitan Housing Authority (AMHA) filed a general unsecured Proof of Claim with the Trustee in the amount of \$166,243.12 regarding the so-called Milton Street, or Joy Park, housing project

located in Akron, Ohio. On the same date, Summit Metropolitan Housing, Inc. (Summit) filed a general unsecured Proof of Claim with the Trustee in the amount of \$1,614,710 regarding the so-called "Hillwood I" project, also located in Akron, Ohio. Summit is a corporation formed and controlled by AMHA for the limited purpose of sponsoring the construction of the "Hillwood I" project in Akron, Ohio, which was to have been constructed by Debtor.

On or about October 27, 1976, the Trustee served on AMHA and Summit formal objections to their claims. In addition, the Trustee counterclaimed for the sum of \$324,311 representing contract extras on various projects completed by Debtor for AMHA prior to the filing of Debtor's Chapter X Petition. The Trustee also counterclaimed for the sum of \$48,687 representing the agreed price for certain raw materials sold to AMHA and Summit subsequent to the filing of Debtor's Petition.

After extensive discovery and negotiation, a settlement agreement dated December 4, 1976 was executed. AMHA withdrew with prejudice its general unsecured claim in the amount of \$166,243.12. Summit reduced its general unsecured claim of \$1,614,710 to the sum of \$577,019.12 and the Trustee agreed to offer no objection to the allowance of said claim in said reduced amount. Trustee withdrew with prejudice his counterclaim against AMHA in the amount of \$324,311. Summit and AMHA acknowledged that the sum of \$48,687 is owed to Trustee and authorized the Trustee to deduct said amount in whole dollars from any and all distributions to which Summit is entitled by reason of its reduced claim in the amount of \$577,019.12.

Ohio Personal Property Tax Claim:

In February of 1973, Trustee received "Preliminary Assessment Certificates" from the State of Ohio for personal property taxes on modules located in Akron, Ohio from 1970 to 1972. Ohio assessed \$473,636.80 for the tax year 1971 and \$692,425.25 for the tax year 1972. By Petition dated March 12, 1973, the Trustee applied to the United States District Court for the Western District of New York to stay and enjoin the State of Ohio from rendering final assessments on said certificates. By Order dated March 14, 1973, the Court granted a temporary stay and set a hearing date of March 26, 1973. The hearing eventually occurred on April 9, 1973 and the State of Ohio applied for an order to extend the bar date for filing Proofs of Claim fixed by Court Order of December 11, 1972, so as to permit Ohio to file a proof of claim with respect to the subject assessments. By Court Order dated April 18, 1973, Ohio was allowed to file its proof of claim. On or about April 30, 1973, Ohio filed a Proof of Claim in the aggregate amount of \$1,166,062.05 based on their earlier preliminary assessment. By Court Order dated February 27, 1974, the United States District Court ruled that the claim of the State of Ohio be heard and reported by the Bankruptcy Judge and by further Order dated February 13, 1976 ruled that the extent of the liability of Debtor, if any, for said Ohio personal property tax be determined by the United States District Court and, therefore, said Court would not defer to the jurisdiction of the Ohio state courts.

The items of dispute between the Trustee and Ohio included the question of who had legal title to the subject modules for the period involved; the number of modules actually located in Ohio for the relevant period; the value of the modules so located; the proper rate to be applied to calculate the tax due, if any, and whether penalties and interest applied.

A full hearing was held before Bankruptcy Judge Edward D. Hayes on September 23, 1976 and shortly thereafter supplementary briefs were filed by the Trustee and the State of Ohio. By decision dated February 22, 1977, Judge Hayes recommended to the Federal District Court that no tax is owed by Debtor to the State of Ohio. The Trustee expects that recommendation will be confirmed by said Court in the near future.

New York Sales Tax Claim:

On July 13, 1972, when the Trustee was appointed, there was pending before the New York State Tax commission a proceeding challenging the Commissioner's preliminary determination of January 21, 1970 that Stirling Homex owed additional sales taxes amounting to \$160,232.97, with penalties and interest of \$22,142.86, for the period August 1, 1968 through August 31, 1969. There was also pending before the Commission a proceeding challenging the preliminary determination of the Commissioner that Stirling Cubet Corporation, a predecessor of Debtor, owed additional sales taxes of \$79,996.65 with interest and penalties of \$17,439.26, for the period March 1, 1968 through July 31, 1969. That proceeding had been consolidated with the proceeding involving Stirling Homex.

The Trustee brought a proceeding in the United States District Court on October 10, 1972 to enjoin the New York State Tax Commission from proceeding to determine the sales tax liability of Stirling Homex and Stirling Cubet, insofar as such proceedings would be binding or purport to be binding with respect to the tax liability of Stirling Homex as transferee or otherwise. The State of New York filed an answer in opposition to the Trustee's application.

On or about October 20, 1972, the State of New York filed a priority proof of claim for unpaid sales and use taxes in

the amount of \$268,598.88.

A 171

By Court Order dated November 8, 1972, the United States District Court enjoined the continuation of the New York State Tax Commission proceedings until the final determination of the within bankruptcy proceeding, or until the further order of said Court. On or about May 10, 1973, the Trustee was advised by the New York State Department of Taxation and Finance that the State of New York had approved the Trustee's application for a refund of franchise taxes, with interest, in the amount of \$316,958.02. The State of New York unilaterally applied the major portion of said refund as a set-off against the sales and use taxes claimed to have been due as a result of the tax proceeding which had been stayed by the United States District Court Order dated November 8, 1972.

By Order dated February 27, 1974, the United States District Court referred the claim of the State of New York for sales and use taxes to the Bankruptcy Judge for findings and recommendations. By Order dated July 15, 1976, the United States District Court ruled that the unilateral set-off by the State was a violation of its Order dated July 13, 1972 and a violation of its Order of November 8, 1972, and that the United States District Court has exclusive jurisdiction to determine the validity of the claims of the State of New York. The Court further ruled that the refund be held by the State of New York, pending and subject to the Court's determination of the validity of the subject claim.

The Trustee filed formal objections to the subject claim and a hearing was held before the Bankruptcy Judge on October 8, 1976 and November 3, 1976. The matter has been fully submitted to the Bankruptcy Judge and a decision is expected in the near future which will result in a report to the Federal District Court for final determination.

Roy Anderson, Jr., Inc. Claim:

The Trustee has received a proof of claim from Roy Anderson, Jr., Inc. dated February 14, 1973 in the sum of \$205,407.87. The claim is based on an alleged oral agreement between Debtor and Roy Anderson, Jr., Inc., for the construction of a manufacturing plant to be located in Harrison County, Mississippi, and to cost between \$3.5 and \$4 million. The amount of \$136,829.87 represents alleged work performed by claimant and others during the period March 1, 1971 to March 31, 1972. The remaining \$68,578 represents alleged lost profits suffered by claimant due to its commitment to build the subject plant for Debtor and consequent inability to accept other work.

By Order dated February 27, 1974, Hon. Harold P. Burke, United States District Judge, referred the subject claim to the Bankruptcy Judge to hear and report his findings and recommendations. Formal objections were filed by the Trustee on September 9, 1976. Prior to the hearing and after extensive negotiation, it was agreed between the parties that the claim be reduced and allowed in the amount of \$85,000. Said agreement was confirmed by Court Order dated February 2, 1977.

North American Car Corporation Claim:

One of the two ways that Debtor shipped modules to customers was by railroad utilizing flat cars equipped with custom designed steel frames to receive and hold the modules in place. Prior to the filing of Debtor's Petition under Chapter X, Debtor leased fifty-four of said special railroad cars from North American Car Corporation.

On or about February 15, 1973, North American Car filed a Proof of Claim in the amount of \$420,618.15. Of that amount, \$15,266.31 represented unpaid rental charges to the date Debtor filed its Petition under Chapter X, and the remaining \$405,351.84 represented rental and other charges for the subject cars from that date to the end of the lease term, or December of 1975.

The subject railroad cars were in the Trustee's possession from the date of his appointment and it was anticipated that the cars would be required to transport modules, especially to prospective customers located in excess of 500 miles from Debtor's storage areas. In May of 1973, the Trustee entered into extensive negotiations with North American Car Corporation regarding the charges for rental from July 12, 1972, which amounted to \$97,200, and the possible terms for future rental of the cars.

On or about May 22, 1973, the following agreement was reached: North American Car agreed to amend its claim in the amount of \$420,618.15, by reducing it to \$15,266.31, representing the unpaid rental charges to July 12, 1972. Rental due pursuant to the lease for the period July 12, 1972 to May 12, 1973 equalled \$97,200. Because the cars were in the possession of the Trustee for this period, even though unused, this amount represented an administration expense that the Trustee would have had to pay in full. In consideration for the continued use of the cars and payment of future rent, North American Car agreed to forgive 30% of that figure, which brought the amount due to \$68,040. The Trustee agreed to pay 20% of the original amount, or \$19,440, immediately and spread the remaining \$48,600 over the next ten months. The term of the lease was modified to extend for ten months, and the Trustee had the right to renew on a monthly basis thereafter.

All of the above was accomplished in accordance with the agreement, and the cars were utilized by the Trustee until June 20, 1975. The Trustee recouped over 60% of the rental he paid from customers who utilized the cars for the shipment of modules purchased from the Trustee. From May of 1973 to June of 1975, a total of 2,042 modules were shipped by rail; 266 more than Debtor had shipped by rail prior to the filing of its Petition. Most of the sales of modules to distant customers were made possible by the availability of said railroad cars.

Stirlings and Yanowitch Claims:

David Stirling, Jr., former Chairman of the Board of Debtor, filed a proof of claim with the Trustee in the sum of \$281,333.34 relating to wages yet to be earned on the remainder of the term of an employment contract. William G. Stirling, former Vice-Chairman of the Board of Debtor, filed a proof of claim in the same amount and relating to his employment contract with Debtor. Harold M. Yanowitch, former Executive Vice President and General Counsel of Debtor, filed a proof of claim in the amount of \$225,000 relating to his employment contract with Debtor. David Stirling, Jr. and William G. Stirling filed another proof of claim as assignees of Hackett Properties, Inc. in the sum of \$123,849 representing rent due from Debtor for the period November, 1969 through August, 1972 for the temporary housing of employees of Debtor at an apartment complex owned by the Stirlings.

In July of 1975, the Securities and Exchange Commission filed a civil injunctive action in the United States District Court for the District of Columbia against David Stirling, Jr., William G. Stirling, Harold M. Yanowitch and others. Simultaneously with the filing of the complaint, the Stirlings, Yanowitch and others, without admitting or denying the allegations in the complaint, consented to the entry of Judgments of Permanent Injunction enjoining them from violations of the reporting and antifraud provisions of the securities laws with respect to the securities of Stirling Homex or any other issues. In addition to the injunction, the Court ordered the Stirlings and Yanowitch to forbear from receiving any assets, properties or monies of Debtor in any distribution which they would be entitled to participate in as a security holder or creditor of Debtor.

By Court Order dated February 27, 1974, United States District Judge Harold P. Burke referred the four claims in question to the Bankruptcy Judge to be "heard and reported by him with findings and recommendations". The findings of fact and recommendations on all four claims were filed with the District Court on November 10, 1975. A hearing was held in United States District Court on December 8, 1975 and, by Order dated December 16, 1975, the findings of fact set forth in the report of the Bankruptcy Judge dated November 10, 1975 were adopted and the claims were allowed to be withdrawn with prejudice to the filing of any new or amended claims.

Secured Claims:

On the date of the filing of the Chapter X Petitions, Kabeth Properties, Inc. owned approximately 435 acres of raw land in the Town of Clay, New York. The land was originally purchased in many separate parcels and there existed five separate mortgages with combined principal balances of \$200,123.83 and covering 325 of the 435 acres Kabeth owned. The original combined face amounts of the subject mortgages was \$746,250. Each of the five mortgagees filed secured Proofs of Claim, and from time to time thereafter each threatened foreclosure proceedings against the Trustee. It was clear to the Trustee from court authorized appraisals and other information that the value of the land which constituted the security for each of the subject mortgages far exceeded the balance due on the mortgages. In light of the above and after individual negotiations with the separate mortgagees, the Trustee agreed to various revised schedules for payment of the principal and interest due on the subject mortgages. The last of the mortgages was satisfied in June of 1976. The Trustee made principal payments of \$200,123.83 and interest payments of \$40,492.90, for a total of \$240,616.73.

At the date of the Trustee's appointment, there existed a mortgage on one of Debtor's plants, known as "Plant II", in the Town of Avon held by Berkshire Life Insurance Company. The face amount of the mortgage was \$135,000; however, it had been paid down to a principal balance of \$34,244.71. A secured proof of claim was filed by Berkshire claiming the principal, plus interest at the rate of 5% per annum from June 1, 1972. Under threat of foreclosure, the Trustee agreed in September of 1973 to keep the interest current, however not to make a payment on principal until the property was sold. The property was sold pursuant to Court Order on October 24, 1974 for \$350,000 and the subject mortgage was satisfied in full. At the same time, the Trustee satisfied a mechanic's lien in favor of Davis Ulmer Sprinkler Company in the amount of \$7,197.90, which had been reduced from a prior claimed amount of \$7,437.40. In light of the above, there remain no secured claims outstanding.

Route 57 & 31 Development Corp. Claim:

A 173

Prior to the filing of the Chapter X Petitions, Kabeth Properties, Inc. entered into a land sale contract with Route 57 & 31 Development Corp. dated December 23, 1970 and subsequently amended February 8, 1971 and February 11, 1971, for the sale of a parcel of real property owned by Kabeth and located in the Town of Clay, County of Onondaga, State of New York. The agreed purchase price was \$2,100,000.

On or about December 20, 1970, Route 57 & 31 Development Corp. paid to Kabeth an initial payment of \$210,000 and made a subsequent payment to Kabeth on or about June 28, 1971 of \$25,000, all toward the purchase price of the subject property. No further payments were made by Route 57 & 31 Development Corp. to Kabeth subsequent to June 28, 1971 and other obligations under the subject contract were not performed by Route 57 & 31 Development Corp., despite written demands therefor from Kabeth.

On September 30, 1972, the Trustee gave Route 57 & 31 Development Corp. formal written notice that they were in default under the subject contract and that the same was terminated in accordance with its provisions. Route 57 & 31 Development Corp. filed a proof of claim seeking the return of the \$235,000 paid on the land contract, plus interest to the date of the filing of the Chapter X Petition.

By Order dated February 27, 1974, the United States District Court referred the subject claim to the Bankruptcy Judge to hear objections thereto and report his findings and recommendations to the Court. The Trustee filed formal objections to the subject claim on April 16, 1974 and a full hearing thereon was held before the Bankruptcy Judge on May 13, 1974.

The Bankruptcy Judge filed his Findings of Fact and Conclusions of Law on August 15, 1974. The Trustee filed a motion to adopt the report of the Bankruptcy Judge and a hearing was held in the United States District Court on September 9, 1974.

By Order dated June 14, 1975, Hon. Harold P. Burke, United States District Judge, ruled that Route 57 & 31 Development Corp. had no valid claim to any portion of the subject real property, and its claim for \$235,000 was in all respects disallowed.

Employee Claims:

The Trustee has received a total of 559 proofs of claim from former employees of Debtor for wages and expenses with an aggregate face amount of \$2,888,473.69. Of that number, 22 claims with an aggregate face amount of \$2,544,748.51 represented claims of former officers of Debtor and were based on the unexpired terms of employment agreements. Of the 559 claims filed, 558 in an aggregate face amount of \$2,858,220.93 have been finally fixed for the aggregate amount of \$615,944.37. There remains one claim with the face amount of \$30,252.76 yet to be finally determined.

Shareholder Claims:

On January 14, 1973, Harry E. Jones and Aleck Goldberg, as custodian of Mark Goldberg, filed a proof of claim as shareholder-tort creditors of Debtor, individually and on behalf of a class of persons similarly situated. The amount claimed as a class was \$30 million. By notice of motion with supporting papers filed April 23, 1974, the Trustee moved for an Order disallowing so much of the claim as purports to be filed on behalf of a class of persons asserted to be similarly situated. Oral argument was had on the motion, and it was submitted for decision on written memoranda. By Order dated July 24, 1975, Hon. Harold P. Burke, United States District Judge, disallowed that portion of the subject proof of claim which was purported to be filed on behalf of a class of persons asserted to be similarly situated. Therefore, the individual claims of Harry E. Jones in the amount of \$3,968.00 and Aleck Goldberg, as custodian of Mark Goldberg, in the amount of \$2,594.63 remain open. In addition, the Trustee has received four other individual stockholder claims in the aggregate face amount of \$15,305.76. Said claims contain allegations that Debtor made numerous false and misleading statements upon which the claimants relied when purchasing Debtor's stock.

TRUSTEE'S CONCLUSION CONCERNING THE FEASIBILITY OF REORGANIZATION

Chapter X of the Bankruptcy Act requires the Trustee of a debtor to propose a plan of reorganization which he deems fair, equitable and feasible to all creditors and stockholders, or to report to the Court of his inability to do so and

the reason therefor. Earlier in this report, the Trustee described the property owned by the Debtor at the time of his appointment and the activities in which it was engaged. A substantial portion of this report has been devoted to a description of the Trustee's activities in the reorganization proceeding, most of which involved the sale of various of the Debtor's assets, the assertion of claims against third persons and settlement of claims against the Debtor. A considerable amount of time has also been devoted to considering whether a feasible plan of reorganization could be developed. It is the Trustee's considered judgment that the only fair, equitable and feasible plan would be one involving an orderly liquidation of the Debtor's assets and a distribution of the proceeds among the Debtor's creditors.

It was the Trustee's original desire and effort to formulate a plan of reorganization under which Debtor would continue as a viable entity. When an internal financing of such an accomplishment became clearly impossible the Trustee explored at length and in many directions the possibility of a merger with or acquisition by some financially sound company. Although there were some who expressed an initial interest, one by one such other companies eliminated themselves as merger prospects.

The Trustee has been faced with a depressed housing industry from the inception of the Trusteeship, with its most severe period occurring at the beginning thereof. Furthermore, most of the major modular housing companies have gone out of business and modular housing in general has gone out of fashion. These factors, coupled with the general economic recession in existence for the duration of the Trusteeship, have made it impossible to accomplish a merger.

With regard to continuing the full range of Debtor's activities, it became clear that the 9,259 modules on hand must be sold before the production of new modules could begin. Secondly, because of the absence of necessary funds and the prospect of little net return, it was clear that the Trustee could not continue the projects in process to their conclusion.

It has taken a considerable period of time to sell the modules. The reasons for this are many. The effect of storing the modules in open fields for extended periods resulted in deterioration of their condition, and purchasers assumed the total risk regarding their refurbishment. Secondly, the cumbersome nature of the modules, typically measuring 12 feet wide, 30 feet long and weighing from 8,000 to 14,000 pounds, required purchasers to plan carefully for shipment of the modules and installation at their site. Thirdly, purchasers faced all the delays associated with real estate development, including seasonal factors and requirements for numerous government approvals.

It is the Trustee's objective to dispose of all of the remaining real estate and other assets of the Debtor and ultimately to make a distribution in cash to the creditors of Debtor.

TRUSTEE'S CONCLUSION CONCERNING SOLVENCY

It is now evident to the Trustee that the stockholders have no equity in the Debtor. The balance sheet of the Debtor, dated July 11, 1972 (Exhibit I), showed a deficiency in stockholders' equity of \$22,032,816. Although creditors' claims have been reduced substantially and the Trustee has recovered various sums on behalf of the Debtor, there still remains a substantial deficiency in stockholders' equity. The amounts realized to date, together with the amounts which will be realized in the future, will be less than the value of total assets (\$20,499,639) shown on the balance sheet. Accordingly, either prior to or in connection with hearings on a plan of reorganization, the Trustee will propose to the Court that the Debtor be adjudicated insolvent and that the stockholders not vote on a plan or participate in any distribution. Coincident therewith, the Trustee will request a ruling from the Court as to whether stockholders who have filed proofs of claim based on fraud shall be included as general creditors for the purpose of participation in any distribution.

FURTHER PROCEEDINGS

Chapter X requires that the creditors and stockholders of the debtor be given an opportunity to submit suggestions for the formulation of a plan of reorganization or proposals in the form of plans.

Within a time to be fixed by the Judge, the Trustee will prepare and file a plan of reorganization. A copy of the plan will be mailed to all creditors, stockholders and other interested parties, together with a notice of hearing on the plan. At the hearing, objections may be made or amendments or plans may be proposed by any creditor, stockholder or other party in interest. After the hearing, the Judge will submit any plan or plans which he regards as worthy of consideration to the Securities and Exchange Commission for an advisory report thereon.

After the Securities and Exchange Commission has filed its advisory report, or has determined that it will not do so, the Judge may enter an order approving a plan which complies with the Bankruptcy Act and which is fair, equitable and

feasible. Upon approval of a plan by the Judge, the Trustee will mail to all creditors, stockholders and other interested parties who are affected by the plan a copy of the plan and other pertinent material which may include the opinion of the Judge, the report of the Securities and Exchange Commission, if any, or summaries thereof. In order to become effective, the plan must be accepted in writing by creditors holding two-thirds in the amount of the claims filed and allowed of each class. If Debtor is adjudicated insolvent, will be proposed by the Trustee, stockholders will not vote on the plan or participate (see "Trustee's Conclusion Concerning solvency") unless and to the extent it is determined by the Court that shareholders claims based on fraud be treated as general unsecured claims. It is not necessary to obtain acceptances from any class of creditors which is not affected by the plan, or stockholders whose interests have been found by the Judge to have no value.

If the requisite acceptances are obtained, the Court will fix a date for a hearing upon notice to all creditors, stockholders and interested parties for the consideration of the confirmation of the plan and all such objections as may be made to the confirmation. Following confirmation by the Judge, steps will be taken to consummate the plan and to terminate the reorganization proceeding.

If the Trustee does not file a plan within the time fixed by the Judge, or if a plan is not approved by the Judge, or if an approved plan is not accepted by the appropriate creditors, or if the Judge refuses to confirm a plan, or if a confirmed plan is not consummated the Judge, after a hearing on notice to all interested parties, will either dismiss the proceeding or adjudge the Debtor bankrupt and order that bankruptcy be proceed with.

The above outline is intended merely to advise the creditors, stockholders and other parties in interest in general terms of the procedure provided by Chapter X of the Bankruptcy Act. It is not intended to be definitive or all inclusive. The Trustee's recommendations should not be considered as precluding any suggestions or proposals which creditors, stockholders or other parties in interest may wish to offer. The Trustee will consider carefully all suggestions or proposals.

The information contained in this report has been obtained from sources generally deemed reliable for the purposes, but no factual information is to be considered as a representation.

Dated: April 18, 1977

Respectfully submitted,

Frank G. Raichle, Trustee
Johnson, Reif & Mullan, P.C.
Attorneys for Trustee
47 South Fitzhugh Street
Rochester, New York 14614
Tel: (716) 262-5700

STIRLING HOMEX CORPORATION
AND SUBSIDIARIES, DEBTORS
(IN PROCEEDINGS FOR REORGANIZATION UNDER
CHAPTER X OF THE BANKRUPTCY ACT)

A 176

CONSOLIDATED BALANCE SHEET

AS AT JULY 11, 1972

NOTE A

ASSETS

Cash		\$117,669
Cash Held in Escrow - Note I		100,000
Trade and Other Receivables - Notes B and H	\$7,328,583	
Less: Allowances for doubtful accounts, claims, etc.	7,012,989	315,594
Federal Income Tax Refund Claims - Note C		3,077,600
New York State Franchise Tax Refund Claims - Note C	263,000	
Less: Reserve for counterclaims	263,000	
Merchandise Inventories - Notes D and H		8,516,948
Land Held for Sale - Notes E and H		1,834,345
Property, Plant and Equipment - at cost,		
Less accumulated depreciation and reserve for loss - Notes F and H		6,459,991
Prepaid Expenses and Other Assets - Note G		<u>77,492</u>
		\$20,499,639

LIABILITIES AND STOCKHOLDERS' DEFICIENCY

Notes Payable to Banks - Note H	\$37,431,973
Accounts Payable, Accrued Expenses and Sundry Liabilities - Note I	4,494,129
Mortgages Payable	271,353
Advance Deposits on Contracts	100,000
Payments Received on Land Contract - Note E	<u>235,000</u>
Total Liabilities	42,532,455

Stockholders' Deficiency:

\$2.40 Cumulative Convertible Preferred Stock - authorized 500,000 shares, \$1.00 par value; 115,453 shares converted to 318,491 shares of common stock; issued and outstanding - 384,547 shares (aggregate involuntary liquidation value - \$15,381,880)	384,547
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Common Stock - authorized 15,000,000 shares, \$.01 par value; issued 9,230,465 shares	92,305
Capital in Excess of Par	26,674,578
(Deficit) - Note A	(49,017,354)
	(21,865,924)
Treasury Stock - at cost (55,400 shares)	(166,892)
Total Stockholders' Deficiency	(22,032,816)
Contingencies, Other Comments and Litigation - Notes B, D, E, F, H, I, and J	\$20,499,639

The accompanying notes are an integral part of this statement.

Reference should be made to the accompanying Accountants' Report for disclaimer of opinion of independent certified public accountants.

**STIRLING HOMEX CORPORATION AND SUBSIDIARIES, DEBTORS
(IN PROCEEDINGS FOR REORGANIZATION UNDER
CHAPTER X OF THE BANKRUPTCY ACT)
NOTES TO CONSOLIDATED BALANCE SHEET AS AT JULY 11, 1972**

Note A - Reorganization Proceedings:

On July 12, 1972 and subsequent thereto, Stirling Homex Corporation and subsidiaries ("Debtors") filed petitions for reorganization under Chapter X of the Federal Bankruptcy Act ("Petitions") with the United States District Court for the Western District of New York ("Court"). The subsidiaries which filed Petitions represented all those subsidiaries with significant operations. These Petitions were approved on July 13, 1972 or subsequent thereto, and Frank G. Raichle was appointed Trustee ("Trustee").

On or about July 11, 1972, the manufacture and installation of housing modules ceased due to inadequate working capital and other reasons. On the basis of various analyses, the Trustee has not resumed installation work on projects which were in progress at that time, nor resumed the manufacture of modules. Further, most of the former employees, including officers and other "key personnel", are no longer associated with the Debtors.

The Trustee is currently seeking to determine whether the Debtors can be reorganized or should be liquidated and, accordingly, has not presented a Plan of Reorganization to the Court. The successful reorganization of the Debtors is dependent upon (1) the development of a feasible Plan of Reorganization, (2) the approval of such a Plan by the creditors and the Court, (3) the ability of the Debtors to commence normal operations on a profitable basis and (4) the ability of the Debtors to obtain adequate financing under a Plan of Reorganization.

As of the date of the filing of the Petitions, the Debtors had on hand at various locations approximately 10,000 uninstalled housing modules of which approximately 900 had been paid for and accordingly were not owned by the Debtors. Many of those modules had been stored for extended periods of time with resultant deterioration. The Debtor's practice prior to the filing of the Petitions was to record module sales and related receivables at a point at which the modules, although uninstalled and physically in the possession of the Debtors, were assigned under

designated sales arrangements. Such sales arrangements also provided for other services to be performed by the Debtors including, in each case, installation of the related modules. However, generally other events such as receipt of various agreements and approvals by the U. S. Department of Housing and Urban Development were necessary to perfect such sales arrangements. Sales and related receivables for a substantial portion of the modules on hand at July 11, 1972, had been recorded by the Debtors pursuant to this practice. As at July 11, 1972, the sale and related receivable amounts were reversed for those sales arrangements (representing all proposed projects for which installation had not commenced) made prior to July 11, 1972 which had not been perfected at such date.

During the period subsequent to July 11, 1972, the Trustee and the Debtors sought to perfect the sales arrangements made prior to July 11, 1972, which could not be achieved and, accordingly, new arrangements were made for the sale of such modules. The new contracts for the sale of modules are on an "as is, where is" basis, excluding other services which had previously been performed by the Debtors, and are generally with parties other than the original intended purchasers. The new sales contracts are at prices which are substantially less than the original cost of manufacture. Accordingly, as set forth in Note D, the module inventory was written down to estimated realizable amount.

The accompanying consolidated balance sheet includes the accounts of Stirling Homex Corporation and all its subsidiaries including U. S. Shelter Corporation, a wholly-owned financial subsidiary, whose accounts were not consolidated in prior years. All material intercompany accounts have been eliminated in the consolidation of all subsidiaries. Such accompanying consolidated balance sheet reflects the carrying amounts of the assets and liabilities as at July 11, 1972 after giving effect to estimated losses on the disposal of the module inventory and certain other assets but does not purport to provide for all of the consequences that may result from the aforementioned filing of Petitions for reorganization by the Debtors, including applicable costs and expenses relating thereto. Further, the accompanying consolidated balance sheet does not give effect to (1) as to the assets, additional losses which may be incurred if the Debtors should liquidate and the remaining assets are disposed of on a "liquidation" basis and (2) as to the liabilities and contingencies, the claims which may be allowed in the proceedings other than those set forth in the accompanying consolidated balance sheet and the determination in the proceedings of their relative status and priority.

The accompanying consolidated balance sheet reflects a number of material adjustments, principally relating to reversals of previously recorded sales and receivables and write-offs or provisions for loss relating to assets of the Debtors. A statement of operations for the period August 1, 1971 through July 11, 1972 has not been prepared. After consideration of the aforementioned adjustments, the results of operations from August 1, 1971 through July 11, 1972 and a cash dividend payment aggregating \$756,346, the Debtors have a capital deficiency of \$22,032,816 at July 11, 1972 as compared with net assets reported at July 31, 1971 of \$33,333,128, a difference of \$55,365,944. Additional expenses will continue relating to the operations of the Debtors during the period of reorganization (including administration expenses) and additional adjustments may be required to the stated amounts of assets and liabilities as at July 11, 1972; such amounts are presently undeterminable and may have a material effect on the accompanying consolidated balance sheet.

Note B - Receivables:

The receivables shown in the accompanying consolidated balance sheet (before consideration of the reserve) represent (1) amounts which the Debtors had recorded applicable to modules and installation for projects for which installation was in progress at the date of the filing of Petitions (approximately \$4,926,000), (2) claims for compensation (including retentions) on projects substantially completed prior to the filing of Petitions (approximately \$1,070,000), (3) certain subordinated notes and mortgages receivable (approximately \$958,000) and (4) sundry items (approximately \$374,000). On the basis of various analyses the Trustee decided the Debtors could not complete any project which was in progress at July 11, 1972. Such projects were generally completed by the Debtor's customers or the bonding company which had issued payment and performance bonds on the projects. The Debtors do not presently know the extent of their July 11, 1972 liabilities or obligations under the contracts pertaining to such projects which have been satisfied by others subsequent to July 11, 1972 and the extent to which the completion of the projects by others would ultimately result in either some payment to the Debtors (generally considered by the Trustee and the Debtors as being unlikely) or additional claims against the Debtors. Accordingly, all receivables applicable to projects in progress have been fully reserved. Furthermore, all other receivables were fully reserved for where the collectibility thereof could not be established during the period from July 11, 1972 to July 24, 1973.

Note C - Income and Franchise Tax Refund Claims:

Federal income tax refund claims shown on the accompanying consolidated balance sheet represent the aggregate of all Federal income taxes paid by the Debtors since inception and were received in August 1972.

Claims for refund of New York State Franchise taxes have also been filed in the amount indicated in the accompanying consolidated balance sheet. The State has asserted various counterclaims based primarily on the assertion that certain sales taxes had not been paid by the Debtors and has withheld settlement until such counterclaims are resolved. Although a reserve for such counterclaims of approximately \$263,000 has been established, the Trustee is presently unable to evaluate the possible outcome of this matter.

Deferred income taxes recorded in previous years applicable to timing differences for previous financial reporting purposes and tax purposes and relating primarily to the module and installation sales have been reversed.

Note D - Merchandise Inventories:

Merchandise inventories consist of the following:

Raw Materials - at cost (a)		\$977,769
Work in process - at cost (a)		80,679
Completed modules - at estimated net realizable amounts (b):		
Estimated selling price	\$11,033,500	
Less: Estimated costs to be incurred in the disposition of the completed modules	<u>3,575,000</u>	<u>7,458,500</u>
		\$8,516,948

- (a) Although known obsolete materials have been written off, these inventories represent items purchased for the Debtors' production of housing modules which production was discontinued on or about July 11, 1972 and contain items which have been specifically designed or manufactured for the Debtors. The amount to be realized from the possible sale or disposal of these materials is not presently determinable and may be materially different from the cost thereof.
- (b) The determination of the estimated realizable amount for the completed modules was based upon the unit selling prices of approximately 5,000 modules for which the Debtors had sales contracts at July 24, 1973 of which approximately 1,500 modules had been shipped. Generally, such sales contracts provide for a 10% down payment upon signing and payment of the balance upon shipment of the modules or at specified dates prior to shipment.

The estimated selling prices for the modules have been reduced by the estimated costs of disposal which have been projected through November 30, 1974, the date at which the Debtors estimate the completion of the delivery of all modules. These costs represent earned wages, storage costs, transportation costs, equipment rental, etc., which are the major portion of the expenses to be incurred by the Debtors (excluding administration expenses) during such period assuming they do not commence normal operations. The aforementioned estimates are based on assumptions that the Debtors (1) will be able to sell all the modules, (2) that they will maintain the present truck and railroad shipping schedule which they have adhered to over the last several months and (3) that sufficient large sales orders are received to continue the use of the fifty-five specially equipped railroad cars at optimum capacity through November 30, 1974.

There is presently no assurance the remaining modules will be sold, that cancellation or other adjustments to the sales contracts entered into will not take place, that future selling prices will approximate those of contracts previously entered into and that the costs of disposition will approximate the estimated costs to be incurred. Because of these indeterminate factors, the amount ultimately to be realized upon the sale of modules could be materially different from the amounts shown herein.

Note E - Land Held for sale:

Land held for sale is recorded at cost plus real estate taxes, mortgage interest and other related carrying costs. In fiscal 1971, the Debtors entered into a contract to sell a parcel of the land which had an allocated cost of approximately \$673,000 for a sale price of \$2,100,000. The Debtors received nonrefundable payments of \$235,000 which have been deferred pending completion of the aforementioned contract; consequently, no effect has been given to the sale in the accompanying consolidated balance sheet. As at July 11, 1972 and through July 24, 1973, there appears to be a dispute as to the payments as called for in the terms of the agreement. Further, there is pending a claim by the Debtors relating to the amount of a condemnation award by New York State. If the claim is successful, a portion of the amount received is to be applied, under certain circumstances, toward the payment of the balance due under the aforementioned contract.

The amount which may be ultimately realized from the disposition of the land held for sale is not presently determinable and may be materially different from the carrying amount thereof.

Note F - Property, Plant and Equipment:

Property, plant and equipment consists of the following:

Land and land improvements		\$1,038,312
Buildings		5,324,372
Machinery and equipment		1,882,860
Furniture, fixtures and office equipment		946,048
Other		82,133
		<u>9,273,725</u>
Less: Accumulated depreciation	\$1,221,734	
Reserve for loss	<u>1,592,000</u>	<u>2,813,734</u>
		\$6,459,991

Buildings are depreciated on the straight-line method over an estimated useful life of forty-five years. All other items are depreciated on the straight-line method over estimated useful lives ranging from one to twenty years.

The reserve for loss represents a 100% reserve for a training and observation facility and a steel high-rise model which were used primarily for prototype demonstrations of high-rise construction techniques, which techniques never reached production stages. Such facilities are considered to have doubtful future utility.

Although a major portion of the remaining property, plant and equipment is currently idle and certain of the equipment was specifically designed for the Debtors, no additional reserve for loss has been provided in the accompanying consolidated balance sheet. Should the Trustee decide to dispose of the remaining property, plant and equipment on a "liquidation basis", the carrying amounts may not be indicative of the amounts to be realized.

Certain items previously carried as property, plant and equipment, having a net carrying amount of approximately \$2,100,000, representing development costs of a proposed Mississippi plant (approximately \$1,050,000), a partially completed prototype of a new high-rise model which was never put into production (approximately \$450,000), leasehold improvements at premises for which leases were terminated (approximately \$225,000) and sundry other fixed assets, have been written off as at July 11, 1972.

Note G - Deferred Charges:

The debtors followed the practice of deferring the costs incurred for various activities which were believed to have future benefit to the Debtors. The costs deferred related to research and development, project and production start-up, possible property acquisitions, staff training, patents, etc. The operations of the Debtors since July 11, 1972 indicate that future benefits would not be realized by the Debtors as a result of such expenditures and, accordingly, approximately \$2,300,000 has been written off as at such date.

Note H - Notes Payable to Banks:

The notes are due to a group of nine banks under two separate loan agreements. These agreements, dated as of January 24, 1972, were entered into by Stirling Homex Corporation, Debtor and a subsidiary, U. S. Shelter Corporation, Debtor and were to provide the companies with a maximum line of credit of \$55,000,000 at rates of one-half of one percent and three percent in excess of the prime rate. The agreements include various restrictions which, among other matters, require the maintenance of certain working capital and specify the allowable number of uninstalled modules.

The Debtors collateralized these notes by granting a security interest in all goods owned by them and held for sale or lease or furnished by them under contract of service, all invoices, claims, contracts, instruments, leases, agreements and accounts then existing or thereafter arising together with the proceeds thereof, the pledge of 100 percent of the outstanding shares of stock of two of the subsidiaries of Stirling Homex Corporation, Debtor, namely U. S. Shelter Corporation, Debtor and Kabeth Properties, Inc., Debtor. Kabeth Properties, Inc. has title to a substantial portion of the land held for sale (see Note E) at July 11, 1972.

On July 7, 1972, the aforementioned Debtors were declared to be in default under the above-mentioned agreements. The notes became due and payable and the banks applied the cash balances they were holding against these notes. The status of the banks' lien on the properties of the Debtors has not been adjudicated. Class action proceedings have been instituted by former officers and directors of the Debtors contesting the banks' lien on certain assets of the Debtors and also have filed objections to the allowance of the banks' proofs of claim.

Note I - Contingencies and Other Comments:

- (1) The court has required that creditors and others file proofs of claim prior to February 20, 1973 for amounts which they assert are due and owing as at July 11, 1972. Certain of such proofs of claim were received subsequent to February 20, 1973 and others which may be received in the future may be allowed by the Court. The Trustee and the Debtors are in the process of investigating all of such claims. Such procedure frequently results in disputes as to the amount considered due and owing. These claims include amounts relating to executory contracts which had been entered into by the Debtors prior to July 11, 1972. As at July 24, 1973, the Debtors have received proofs of claim in an aggregate amount of approximately \$46,500,000 of which approximately \$38,000,000 (including interest) was filed by the consortium of banks (see Note H).

Included in the above is a proof of claim from the State of Ohio, County of Franklin, in the amount of approximately \$1,200,000 for unpaid taxes for which no provision has been made in the accompanying consolidated balance sheet. The Trustee is unable to ascertain the extent, if any, of the Debtors' liability at this time.

In addition, the bonding company which had been retained by the Debtors to act as a surety in their performance of contracts and jobs has filed a contingent and unliquidated proof of claim for all loss, cost, damages, liability and expenses incurred in acting as surety for the Debtors. The Trustee is unable, at this time, to determine the extent of this claim. Therefore, no amount has been provided for such claim in the accompanying consolidated balance sheet.

It is not possible to predict the amounts of the above claims which may be allowed.

- (2) Pursuant to a Court order, the funds received by the Debtors pursuant to the escrow agreement were refunded by the Debtors subsequent to July 11, 1972.

Note J - Litigation:

Various actions have been commenced or are threatened against the Debtors, its former officers and directors and others by stockholders, creditors, employees, etc. raising various issues. In addition, there is other litigation pending which commenced prior to the filing of the Petitions. Further, the Trustee is considering the advisability of commencing legal action with regard to certain occurrences. It is presently not possible for the Trustee or his counsel to predict the outcome of these actions, the net effect of which could be either materially favorable or unfavorable to the accompanying consolidated balance sheet at July 11, 1972.

EXHIBIT I

A 182

S. D. LEIDESDORF & CO.
CERTIFIED PUBLIC ACCOUNTANTS
100 EAST 42ND STREET
NEW YORK, N. Y. 10017
AREA CODE 212 697-0200
TELEX: 12-5278 LEIDESDORF NYK

ACCOUNTANT'S REPORT

Mr. Frank G. Raichle, Trustee
Stirling Homex Corporation, Debtor
Avon, New York

We have examined the consolidated balance sheet of Stirling Homex Corporation and subsidiaries ("Debtors") as at July 11, 1972. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances except as stated in the sixth paragraph hereinafter.

As indicated in Note A, on July 12, 1972 and subsequent thereto, the Debtors filed petitions for reorganization under Chapter X of the Federal Bankruptcy Act ("Petitions") with the United States District Court for the Western District of New York ("Court"). These Petitions were approved on July 13, 1972 or subsequent thereto, and Frank G. Raichle was appointed Trustee ("Trustee"). The Debtors ceased normal operations on or about July 11, 1972 and the Trustee is currently seeking to determine whether the Debtors can be successfully reorganized or should be liquidated.

The accompanying consolidated balance sheet reflects the carrying amounts of the assets and liabilities as at July 11, 1972 after giving effect to estimated losses on the disposal of the module inventory and certain other assets, but does not purport to provide for all of the consequences that may result from the aforementioned filing of Petitions for reorganization by the Debtors, including applicable costs and expenses relating thereto. Further, the accompanying consolidated balance sheet does not give effect to (1) as to the assets, additional losses which may be incurred if the Debtors should liquidate and the remaining assets are disposed of on a "liquidation" basis and (2) as to the liabilities, additional claims which may be allowed in the proceedings other than those set forth in the accompanying consolidated balance sheet and the determination in the proceedings of their relative status and priority.

As mentioned above, the Trustee has not yet determined whether the Debtors can be successfully reorganized or should be liquidated. It should be noted that the Debtors have incurred substantial losses and as at July 11, 1972 have a substantial capital deficiency. The successful reorganization of the Debtors is dependent upon (1) the development of a feasible Plan of Reorganization, (2) the approval of such Plan by the creditors and the Court, (3) the ability of the Debtors to commence normal operations on a profitable basis and (4) the ability of the Debtors to obtain adequate financing under a Plan of Reorganization. The eventual outcome of these matters is not presently determinable.

As to certain matters more fully set forth in the notes to the consolidated balance sheet, we are unable to satisfy ourselves as to (1) the Debtors estimate of the realizable amount of all the assets included in the accompanying consolidated balance sheet other than cash, cash held in escrow and the Federal income tax refund claims and (2) the effect of claims which may be brought against the Debtors for completion of the partial installation of modules commenced prior to July 11, 1972.

As set forth in Note J, the Debtors are defendants in pending litigation, the outcome of which is uncertain.

We have been unable to obtain certain representations from the Trustee and persons constituting the present management of the Debtors including their opinion as to the fairness of the accompanying financial statement and notes thereto. Such individuals have advised us that they are not in a position to make such representations.

Because of the materiality of the matters set forth in the preceding paragraphs, we are unable to express an opinion on the accompanying consolidated balance sheet of Stirling Homex Corporation and subsidiaries (Debtors) as at July 11, 1972.

New York, N. Y.
July 24, 1973

EXHIBIT II

Summary Statement of Cash Receipts and Disbursements
July 12, 1972 to March 31, 1977
(Unaudited)

Receipts:

Sales of Modules (including liquidated damages on contract forfeitures)	\$10,679,390
Sales of Raw Materials	649,066
Sales of Land, Plant II, Machinery and Equipment, Furniture, and Other Assets	1,289,493
Federal and State tax refunds	3,221,761
Collection of pre-bankruptcy accounts and receivables	546,364
Interest Income	2,665,469
Rentals of real estate and equipment	532,513
Charges for transportation, handling of modules, consulting, storage, etc.	197,908
Miscellaneous, including security deposits, net of returns	97,679
Total Receipts	\$19,879,643

Disbursements:

Payment to Banks-Per Settlement Agreement and Court Order	\$ 7,000,000
Interest and principal payments on mortgages	274,969
Purchases of land on foreclosures	121,232
Salaries, wages and related expenses	3,018,078
Real Estate taxes (net of refunds), franchise and miscellaneous taxes	685,727
Heat, Light, Power and other utilities	339,479
Rentals - Real estate and equipment	655,733
Outside security services	257,140
Accountants, attorneys and appraisal fees and expenses	362,240
Insurance	485,312
Repairs - trailers, trucks, etc., fuel, transportation and other vehicle costs	212,541
Miscellaneous	250,398
Total Disbursements	\$13,662,849

Excess of Receipts over Disbursements, represented by:

Cash in Marine Midland Bank	\$ 133,830	
Certificates of Deposit - Marine Midland Bank	6,082,964	\$ 6,216,794

EXHIBIT III**A 184****Summary Schedule of Claims Against Debtors**

The last date for filing proofs of claim was February 19, 1973. Through that date, the following proofs of claims were filed:

No. of Claimants	Classification	Aggregate Amount ¹
16	Secured Claims	\$54,233,814.02 ²
559	Wage Claims	2,888,473.69 ³
25	Tax Claims	1,571,623.70 ⁴
357	General Unsecured Claims	10,761,665.28
7	Stockholder Fraud Claims	30,021,868.39 ⁵

1. The figures in this column represent the face amount of the original claims filed or as amended upward.
2. Includes the claims of 9 banks in the aggregate amount of \$54,010,808.08, which was overstated on account of duplication by \$15,902,305.52. Pursuant to Court Order of June 29, 1976, such bank claims have subsequently been allowed in the aggregate amount \$38,046,452.14 and classified as general unsecured claims.
3. Includes 22 claims from former officers based on the unexpired terms of employee agreements in the aggregate face amount of \$2,544,748.51.
4. Includes claim of \$1,166,062.05 filed by the State of Ohio, which has been disallowed. Also includes claim of \$268,599.88 filed by the State of New York, which is being contested by the Trustee.
5. Includes class action claim in the amount of \$30,000,000, which has been disallowed by Court Order dated July 24, 1975.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

A 185

In the matter of

STERLING HOMEX CORPORATION

Bankruptcy No. 77-1379

Debtor

STATEMENT UNDER BANKRUPTCY RULE
10-211

I, WALTON BADER, a member of the Bar of the State of New York, hereby states the following under penalties of perjury.

The following information is submitted to the Court pursuant to Rule 10-211 of the Rules of Bankruptcy Procedure.

1. The name and address of the stockholder presently represented is

(MRS.) D. WINDSOR DIXON
60 Forest Road
Asheville North Carolina 28803

2. The said stockholder intends to represent a Class of stockholders of the debtor.

3. The nature of the claim is the ownership of one hundred (100) shares of \$2.40 preferred stock of the debtor.

4. The stock was acquired more than one year prior to the date of the filing of the petition in bankruptcy.

5. The facts and circumstances with respect to the employment of the undersigned by the claimant stockholder is as follows:

Claimant contacted the undersigned by telephone and requested representation of her claim.

6. There is no written instrument in effect authorizing the undersigned to act for the claimant. There is an oral understanding the undersigned will be

A 186

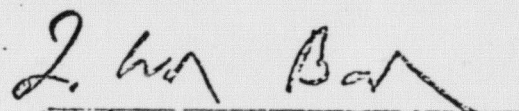
compensated exclusively by any fee allowance that may be awarded by the Bankruptcy Court.

Dated : June 6th, 1977


T. Walton Bader

CERTIFICATE OF SERVICE

I hereby certify that on June 6th, 1977 I served a copy of the foregoing document, by mail, upon JOHNSON, REIF & MULLAN, Attorneys for Trustee, 47 S. Fitzhugh Street, Rochester New York 14614.


T. Walton Bader

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

A 187

In the matter of

STERLING HOMEX CORPORATION

Bankruptcy No. 72-1399

Debtor

NOTICE OF APPEARANCE

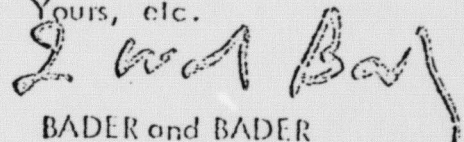
PLEASE TAKE NOTICE THAT (MRS.) D. WINDSOR DIXON, residing at 60 Forest Road, Ashville, North Carolina 28803, the holder of 100 shares of \$2.40 Preferred Stock of the debtor, hereby appears in this proceeding and takes the following position:

In her own behalf, and in behalf of the Class of stockholders of the debtor, that the said stockholders of the debtor are "defrauded stockholders" and, as such, are entitled to participate in the assets of this Estate as "General Creditors"

The undersigned has been retained as attorney for the aforesaid stockholder and has filed a Statement pursuant to Bankruptcy Rule 10-211 herein.

Dated : June 10th, 1977

Yours, etc.



BADER and BADER
Attorneys for Stockholder
270 Madison Avenue
New York NY 10016
Telephone: 212-532-6860

ESTIMATED LIQUIDATION DISTRIBUTIONS

A 188

I. <u>Cash and C/D's as of May 31, 1977</u>		\$ 6,236,742
II. <u>Assets to be Liquidated:</u>		
Modules	\$ 100,000	
Raw Materials	62,200	
Furniture, Fixtures, Machinery & Equipment	214,000	
Real Property	3,103,570	
Condemnation Award	298,864	
Accounts Receivable, Net of Accounts Payable	<u>(29,000)</u>	<u>3,749,634</u>
III. <u>Total</u>		\$ 9,986,376
IV. <u>Add: Payment made on account to Banks</u>		<u>7,000,000</u>
V. <u>Estimated Distributable Estate</u> <u>before future Administration Expenses</u>		<u>\$16,986,376</u>

<u>Current Audited Total of Claims</u>	<u>\$45,961,000</u>
--	---------------------

Estimated Percentage Distribution on Claims:

If Net Distributable Estate is \$14,000,000	- 30.46%
If Net Distributable Estate is \$15,000,000	- 32.64%
If Net Distributable Estate is \$16,000,000	- 34.81%

June 7, 1977

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

A 189

-----X
In the Matter of

STIRLING HOMEX CORPORATION,
Consolidated Debtor.

In Proceedings for
Reorganization Under
Chapter X of the
Bankruptcy Acts

BK - 72 - 1339
-----X

ATTORNEY'S STATEMENT UNDER BANKRUPTCY
RULE 10-211(a).

ROBERT B. BLOCK, as attorney for shareholder-creditors of Stirling Homex Corporation the above-named debtor, makes the following statment for filing by him with this Court pursuant to Bankruptcy Rule 10-211(a):

I am a member of Pomerantz Levy Haudek & Block, attorneys-at-law, 295 Madison Avenue, New York, New York 10017. Said firm represents stockholder-creditors as follows:

Gregory Jezarian and Geraldine Jezarian,
both of 2820 Marion Avenue, Bronx, New York 10462.

Lonetown Company, c/o Walter Werner, 1 West 81st
Street, New York, New York 10024.

Gregory Jezarian bought 25 shares of Stirling Homex common stock on or about March 19, 1971, cost = \$675.00; and 100 shares of said stock on or about March 23, 1972, cost = \$1150.00. He sold 125 shares of said stock on or about May 17, 1972.

Gregory Jezarian and Geraldine Jezarian jointly bought 50 shares of such common stock, cost = \$1130.34, which they still hold, on or about March 22, 1971.

Lonetown Company bought 100 shares of preferred stock of Stirling Homex Corporation on or about January 6, 1972, cost = \$5359.30, which it still holds.

Each such person claims the cost of such shares as above stated.

My representation of such persons as stockholder-creditors in this proceeding arises out of their retention of my firm prior to April 24, 1972 in the case of Mr. and Mrs. Jezarian and prior to November 8, 1972 in the case of Lonetown Company to prosecute claims for Securities Acts violations against Stirling Homex Corporation and others, in behalf of such persons and a class of persons similarly situated. Under that retainer an action has been brought and is pending in the United States District Court for the Southern District of New York titled Jezarian, et al. v. Csapo, et al., 72 Civ. 1671 (DBB).

In this proceeding I am appearing not only for the above mentioned persons but for the class they represent as duly certified in Jezarian v. Csapo, to wit, purchasers of securities of Stirling Homex Corporation between March 16, 1971 and July 10, 1972.

Neither I nor, upon information and belief, any member of my firm owns any claims against or stock of Stirling Homex Corporation.

There is no written retainer or other instrument covering my firm's representation of Mr. and Mrs. Jezarian and Lonetown Company.

Dated: New York, New York
June 10, 1977


ROBERT B. BLOCK
Attorney-at-law
Office and P.O. Address
295 Madison Avenue
New York, New York 10017
(212) 532-4800

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NEW YORK

In the Matter)
)
 -of-)
)
 STIRLING HOMEX CORPORATION,)
)
 Debtor.)
 -----)

BX-72-1399

Transcript of proceedings had and testimony taken
in the above-entitled matter, before the HON. HAROLD P.
BURKE, United States District Judge, in the United States
District Court, at Rochester, New York, on Monday, June 13,
1977.

APPEARANCES:

FRANK G. RAICHLE, ESQ.
Trustee for Stirling Homex Corporation

MESSRS. JOHNSON, REIF AND MULLAN, P. C.
(By Byron Johnson, Esq., and
Thomas W. Petrillo, Esq.)
47 South Fitzhugh Street
Rochester, New York 14614

Of Counsel for Trustee.

MESSRS. ZALKIN, RODIN & GOODMAN
(By Henry Lewis Goodman, Esq., and
Richard Toder, Esq.)
750 Third Avenue
New York, New York 10017

Appearing on behalf of Chemical Bank.

A 192

APPEARANCES: (Continued)

MESSRS. POMERANTZ, LEVY, HAUDEK & BLOCK
(By Robert B. Block, Esq.)
295 Madison Avenue
New York, New York 10017

Appearing on behalf of Gregory Jezarian, et al

MESSRS. BROWN, KELLY, TURNER, HASSETT & LEACH
(By Frederick D. Turner, Esq.)
700 Niagara Frontier Building
290 Main Street
Buffalo, New York 14202

Appearing on behalf of The Travelers Indemnity
Company.

MESSRS. BADER AND BADER
(By I. Walton Bader, Esq.)
270 Madison Avenue
New York, New York 10016

Appearing on behalf of Preferred Stockholder
Mrs. D. Windsor Dixon.

MESSRS. NIXON, HARGRAVE, DEVANS & DOYLE
(By Edward J. Burns, Esq.)
2200 Lincoln First Tower
Rochester, New York 14603

Appearing on behalf of Lincoln First Bank
of Rochester.

MESSRS. BROWN, WOOD, IVEY, MITCHELL & PETTY
(By A. Robert Pietrzak, Esq.)
One Liberty Plaza
New York, New York 10006

Appearing on behalf of Merrill Lynch,
Pierce, Fenner & Smith, Incorporated.

MESSRS. PHILLIPS, LYTLE, HITCHCOCK, BLAINE & HUBER
(By Alexander C. Cordes, Esq.)
3400 Marine Midland Center
Buffalo, New York 14203

Appearing on behalf of Marine Midland Bank.

I N D E XMonday, June 13, 1977PageWitnessFrank G. Raichle

Examination by Mr. Johnson

4

Examination by Mr. Bader

11

Statements by Counsel:

Mr. Block

19, 50

Mr. Bader

37

Mr. Johnson

44

Mr. Goodman

45

Mr. Turner

48

Mr. Cordes

52

Mr. Burns

53

Mr. Raichle

54

EXHIBITS

<u>Exhibit Number</u>	<u>Description</u>	<u>Marked for Identification</u>	<u>Marked in Evidence</u>
1	Notice, Order and Application re pending motion; Section 167 Report of Mr. Raichle	5	19
2	Copy of accountant's report re financial statement of Stirling Homex as of 7-11-72	6	19
3	Document entitled "Estimated Liquidation Distribution."	9	19

A 195

Rochester, New York

Monday, June 13, 1977

2:30 p.m.

- - -

MR. RAICHLE: I would like to move the admission pro hac for the purpose of this case of two New York lawyers. I would like to introduce Mr. Robert B. Block of the New York Bar. He is a member of the Bar of Northern District, the Eastern District and of the Court of Appeals, and Second Circuit and the Supreme Court. I have known him for some time. I would like to move his admission for the purpose of this case.

THE COURT: Fine -- granted.

MR. RAICHLE: I would like to introduce Mr. I. Walton Bader of the firm of Bader and Bader. He comes from New York. He is a member of the Bar of the Southern District and of the Eastern District and the Court of Appeals and the United States Supreme Court. I would like to move his admission for the purpose of this case.

THE COURT: Granted.

MR. BADER: Your Honor, I would like to

A 196

thank the Trustee for doing this chore at this point, and I do appreciate what he has done. I also appreciate what Mr. Johnson has done for me in prior discussions that I have had in this case. I rarely run into two gentlemen as professional as these gentlemen have been, and I would like the Court to at least have that statement at this time.

MR. RAICHLE: Your Honor, we have two matters here today, two motions brought on by the Trustee. The first motion is for determination that Stirling Homex Corporation is insolvent; and therefore, the stockholders, as such, should not participate in the distribution of the proceeds of the sale of assets and that the stockholders, as such, be determined to have no further interest in the proceedings and not vote on any proposed plan.

Now that proceeding involves some testimony, testimony on my part. It will be comparatively brief, because I think everybody concedes the insolvency. I have heard of no one who doesn't, but I want to make a record with Your Honor's permission.

The second matter, broadly speaking, involves an application justified by Section 197 of the

A 197

Bankruptcy Act, to have Your Honor determine the classification of certain creditors, and in particular, that the creditors of the so-called defrauded stockholders, stockholders whom I claim are trying to bootstrap their way into a creditor position, should not be recognized as creditors except subordinated to the other general unsecured creditors. That is the second proceeding. With your permission, we will start with the first one. Mr. Johnson will ask me some questions.

F R A N K G . R A I C H L E ,

called as a witness, being first duly sworn, testified as follows:

EXAMINATION BY MR. JOHNSON:

Q Mr. Raichle, you are an attorney licensed to practice in the State of New York, are you not?

A I am.

Q And you are the duly acting Trustee pursuant to the order of this court to administer the estate of Stirling Homex Corporation, a debtor under Chapter X of the Bankruptcy Act?

A I am.

Q And when were you so appointed?

A On July 13, 1972, so far as the parent corporation,

Stirling Homex Corporation, is concerned. And in the same month, but later on in the month, I was appointed to the trusteeship of five subsidiaries.

Q And it is true, is it not, that by order of June 30, 1976, this court substantively consolidated those subsidiary corporations into a Stirling Homex Corporation, which continues to be the successor debtor?

A Yes. The names of those corporations appear on my 167 report, which I foresee will be in evidence, so I don't need to recite the names.

Q And you are still, and you continue to be the acting Trustee under that order of this court that you mentioned, dated July 12, 1972?

A Under the orders that I mentioned.

MR. JOHNSON: Would you mark
this for identification?

(Exhibit 1 marked for identification.)

Q Mr. Raichle, I show you Exhibit 1 marked for identification and ask you what that is?

A The first page is a notice of these proceedings here today. The second page is the order fixing the date and so forth. The third page is a first page of my applica-

A 199

tion for the order fixing a date for these hearings, and there then followed a Section 167 report. It is a report of my activities as trustee and in some considerable detail. It has been filed with the court. I think all of the interested parties have had a copy, and the purpose of offering it here today, as I understand it, is to put my oath to those things which are stated on my knowledge; and except for the matters which are clearly a result of my investigations, and to a certain extent, hearsay, I reaffirm what I have put in this report.

Q And you state that this is a fair and accurate resume of your administration of Stirling Homex Corporation since the date of your appointment?

A It is intended to be done under my supervision and by me in certain respects, and it is, as you say, a true and correct account of my activities.

MR. JOHNSON: Would you mark
this for identification?

(Exhibit 2 marked for identification.)

Q Mr. Raichle, I show you Exhibit 2 and ask you to explain to the Court what that is?

A That is, in effect, simply a printed copy of the report

A 200

made by my accountants. At July 11, 1972, this report is dated, or was filed by my accountants one year later, and so far as I know, confirmed by my own investigation, sets forth the financial status of the company, or at least a consolidated balance sheet at July 11, 1972. Commenting on the balance sheet on Exhibit 2, the assets are shown as \$20,499,639; and liabilities of \$42,532,455--an obvious deficiency as shown by this report at that time.

Now the assets shown as \$20,499,639 on this report have been, in a large measure, liquidated, and I am in the position to make a fairly accurate prognosis, projection of what the ultimate proceeds of liquidation of what all of the assets will be.

At the time of my appointment, there was on hand approximately ten thousand -- I think it is ten thousand and ninety-one -- uninstalled modules. Of this, nine thousand two hundred and some constituted inventory. I have succeeded, with the aid of a very able staff, to have sold, liquidated, if you please, all but seventy-one of that nine thousand two hundred and some.

The proceeds of the module sales are added to the sales of raw materials, that is, excess lumber and parts and odds and ends.

A 201

I have sold some real estate, but not all. I have on hand represented largely by certificates of deposit in the Marine Midland Bank -- I may not have the correct name of it. What is it?

MR. CORDES: That's correct, sir,

Marine Midland Bank.

A (Continuing) \$6,236,742. That is after the payment in pursuance of the settlement made with the consortium of banks who were creditors to the tune of approximately \$38,000,000 -- a payment of \$7,000,000.

There remains to be liquidated the modules which I mentioned, seventy-one or thereabouts, for which I expect to get \$100,000. I don't guarantee it; based on the sale price of most of the others, I would project that. And raw materials of \$62,200 remain to be sold. Furniture, fixtures, machinery and equipment of \$214,000, consisting largely of trailer trucks which we no longer have any use for. Real property, which I had lumped for this purpose, at the aggregate price of \$3,103,570.

We have a condemnation award against the State of New York for the taking of part of the Clay real estate, as it is described in my 167 report, of \$298,864.

There is one other item I should mention. We have

accounts receivable not quite in the amount of the accounts payable. We owe \$29,000.

I have here a paper entitled "Estimated Liquidation Distributions," which would be informative to the Court and the parties in interest. If you want to, you can offer it in evidence.

MR. JOHNSON: Would you mark this for identification?

(Exhibit 3 marked for identification.)

Q Mr. Raichle, I show you Exhibit 3. Is that the summary which you just referred to?

A Yes. I think it speaks pretty much for itself. I would be glad to answer any questions concerning it. The real property values are predicated upon appraisals by qualified appraisers appointed under authority of court orders made and entered from it in this bankruptcy proceeding, and in my judgment are reasonable and fair. I don't guarantee to get the \$3,103,570, especially if I have to hurry the negotiations. But I have put that figure there because of the appraisals which we have; otherwise, I think there is a document which, as I say, speaks for itself.

I have made some estimated percentage distrubiton on the claims of general unsecured creditors, and excluding for the purpose of this computation anything that might be awarded to the claims of so-called defrauded stockholders. This is on the basis of the claims filed and the proceeds of the liquidation thus far accomplished, and the projection of the proceeds to be received on the total liquidation.

It is obvious, if I might comment, that Stirling Homex Corporation, in its substantive consolidated state, is hopelessly insolvent, and that there remains nothing for the stockholders, as such, and, therefore, we would ask for an order, or a finding of the Court, to that effect.

MR. JOHNSON: I move to receive into evidence Exhibits 1, 2 and 3. I distributed copies of Exhibit 3 to counsel. They already have, of course, Exhibits 1 and 2. I offer them in evidence.

THE COURT: They are received in evidence. They will be marked later. They are in evidence now.

THE WITNESS: That concludes
my direct examination.

MR. JOHNSON: Any questions?

EXAMINATION BY MR. BADER:

Q Mr. Raichle, I read about an hour ago the fine reports that you have put in in connection with your administration of this estate, for which I would like to compliment you at this time.

A Thank you.

Q Now in reading the document, Exhibit 3, I don't see any value to the action which you brought in the Western District of New York against various persons for defrauding the corporation. And I would like to know whether you have any estimate as to what that action might bring?

A Well, I wanted this report to be conservative. My present information, based upon some investigation, is that there will be great difficulty in recovering from responsible defendants anything that the courts might give by way of judgment. I have confidence in the merits of the claims that I make. I think they are well founded and justified, but these defendants, that is, the Stirlings, Yanowitch, and so forth, are the subject of many lawsuits, and considerable expense in defending themselves. The

principal defendants, if I might so characterize them, have been convicted in the Southern District, of felonies and have been sentenced to prison. And I foresee great difficulty in realizing anything tangible, although, I shall continue my efforts, within reason.

Q I read your complaint, sir. I thought it was a rather masterful piece of work.

A Thank you.

Q And I think that you have done an awful lot of work in connection with assembling the documents and evidence and everything else, and I would like to ask you at this point -- and I appreciate the fact that it might be difficult to collect from the Stirlings, because any judgment here might then have to be brought over to England. We might have difficulty in getting an English court to put its imprimatur on the judgment. I don't think we will have the Stirlings back again in the United States, and I can appreciate your problems. But now as far as Mr. Yanowitch, Mr. Schulz, Mr. Marshall and Mr. Csapo, as far as I know, they are still living in the United States, are they not?

A My information is that they are. I will take them one by one.

Q Yes, sir.

A And I'm not pleading their poverty by answering your query about the chances of collection.

Yanowitch resides in Braintree, Massachusetts, according to my information. He is completely without funds. He is shattered mentally and physically and is on his way, if this case is not reversed, to prison.

Mr. Schulz was a salaried employee who has since his severance from the company been living in Pennsylvania, as I am informed. He is, through his counsel, furnishing a statement under oath of his affairs, his financial affairs.

Mr. Marshall is a sick man who lives in Florida. He is similarly representing to us, through his counsel, that he is without funds and has suggested a small settlement, which we are considering.

Q And Mr. Csapo?

A I know little about him except that he is not reputed to be a man of means then or now.

Q Didn't any of these people have director's liabilities and omission policies covering them?

A No.

Q They had no insurance whatsoever covering the corporation?

A No. And when I say "no," none that I can discover.

Q And let's assume for the sake of argument, that at this point, I should bring an action against the corporation on some fraud grounds. I realize there are stays involved, and I am not suggesting that I would do that, but I am saying if I brought an action against the corporation upon some fraud grounds, assuming that I could, and assuming that I prevailed, that judgment, then, would simply have to come out of the assets of the corporation that is set forth in Exhibit 3, as I understand it?

A If you climbed all those hurdles.

Q Yes, I mean assuming that I climbed all of the hurdles, assuming that I sued the corporation for fraud.

A Let me put it in my own way. I know of no assets other than those which come within these classifications.

Q And no insurance policies?

A And no insurance policies. But I would like to find some.

Q That is perfectly all right. I'm just asking the question, because apparently, I don't know. That is all right.

And I am just asking you, sir, to help me.

A I will turn it around -- you help me.

Q Also, I presume that you are familiar, are you not, with the case of Ultramarines against Touche?

A I am.

Q Under that case, would not the Trustee have an action in the name of a corporation against the accountants for failing to apply the appropriate accounting tests on negligence grounds in order to be able to recover damages from the accountants?

I realize that your report says "no." I have read your report, but I would like you to amplify that for a moment, if you will.

A Well, the only amplification that I can give you is I don't think the case you referred to is authority for the conclusion you reach.

Q Let me do it a little more clearly, sir. If I -- and when I am saying "I," understand that I mean a client. If I sue an accountant for "Securities fraud," which, of course, is the subject matter of various class actions that are pending in the Southern District of New York, as you know -- I must prove in order to establish liability on the part of that accountant as the Supreme Court has decided in Hochfeld, H-o-c-h-f-e-l-d --

A You have to prove scienter.

Q Actually, fraud, really, don't you?

A That is what "scienter" means.

Q Plus misrepresentation of a material fact?

A Involving misrepresentation.

Q And reliance on the part of the person who --

THE COURT: This is just a discussion of the meaning and result of that case. It adds nothing. I'm not bound by anybody's interpretation of it. I can interpret it myself.

MR. BADER: All right, Your Honor. I will drop that line of questioning. I'm trying to get facts. I'm not intending to get into a legal discussion with the Trustee at this particular point, Your Honor.

Q What I want to say to you is this, sir: Is it not true that if the corporation would sue the accountants for negligence, the corporation would merely have to show negligence and not fraud?

THE COURT: Now that is not asking for a fact at all. That is asking for an interpretation, and I am not bound by anyone's interpretation.

MR. BADER: Your Honor, I withdraw the question. I have no further questions

at this time. Thank you, Your Honor.

(Witness excused.)

MR. RAICHLE: That constitutes our proof, brief as it is, and supplemented by the documents and the records alluded to and those on file in this proceeding.

THE COURT: I was familiar with these facts before this testimony, and I have no hesitancy in declaring the corporation insolvent.

MR. RAICHLE: We will prepare an order.

Now the second of the motions here presents a little more complicated situation.

Under Section 197 of the Bankruptcy Act, the Court has the power, and I think the duty when pressed, to fix as the statute says, the division of creditors and stockholders into classes according to the nature of their respective claims and stock.

Now there has appeared on the scene lawyers representing so-called defrauded stockholders. They fall into divisions--stockholders who still have their stock, who claim that they were moved

to purchase the same by false and fraudulent filings with the SEC, the Form 10-K and the various registration statements, news releases, and so forth. And those who still have their stock and those who sold their stock, who have claims, so they say, under the provisions of the securities laws, the '33 Act and the '34 Act.

Now, of course, these lawyers will speak for themselves, but I just want Your Honor to know what we are asking for here in the nature of this motion. I'm getting near the time when I will have to prepare and submit a plan. It can't be a plan of reorganization in the sense of floating out a viable operating company. It must be a liquidation, and it makes a lot of difference to all these creditors, the orthodox or conventional, ordinary creditors, the bank creditors and so forth, whether there is to be included on a pari passu basis the claims of so-called defrauded stockholders.

I am advised that in the opinion of counsel for a class of such stockholders that their claims could aggregate one hundred million dollars. I'm advised further that there are thousands of stock-

holders involved. The question is a very important and very involved one, and to a certain extent it is a matter of first impression. But I want to make it clear that our motion is intended to raise the threshold question of whether defrauded stockholders, assuming that they are defrauded, assuming that they could prove that they are defrauded, and the circumstances of this case could be regarded as general unsecured creditors.

Now I will let the lawyers who are so asserting come forward, but this motion, this literal reading, says whether those who have filed claims shall be included as general creditors, we're expanding the motion with the consent of the counsel who are here to include those who have not filed claims in our discussion and for determination.

THE COURT: The Reporter can now mark Exhibits 1, 2 and 3 in evidence.

(Exhibits 1, 2 and 3 marked in evidence.)

MR. BLOCK: May it please Your Honor, my name is Robert B. Block. I am of the firm of

Pomerantz, Levy, Haudek & Block of New York City. I appear for Gregory and Geraldine Jezarian and Lonetown Company, who are plaintiffs in a class action that has been pending since prior to bankruptcy, since April of 1972, in the Southern District Federal Court. It is one of the twenty-eight actions which have been consolidated for pretrial purposes before Judge Bonsal, by order of the judicial panel on multi-district litigation.

Jezarian against Csapo, the suit brought by my firm, is the only one of those actions that has been certified as a class suit. The class is defined as all purchasers of Stirling Homex securities between March 18, 1971, and July 10, 1972, the date of the bankruptcy.

Your Honor, before I go further, may I hand up my attorney's statement under Rule 10-211(A).

(Document handed to the Court.)

MR. BLOCK: Your Honor, in the Jezarian suit, I am also acting as chairman of the committee of plaintiffs' counsel for the conduct of pretrial discovery by class plaintiffs, and in that capacity, I have been in charge of the litigation and con-

tinue so to be.

I'm speaking here not only for the three persons that I mentioned but also for the class of allegedly defrauded security holders that they represent.

The Jezarian case is not pending against Stirling Homex --

THE COURT: You are maintaining that everybody who bought stock between those dates was defrauded in the purchase of the stock?

MR. BLOCK: Yes, Your Honor, I do.

THE COURT: In other words, that means nobody who bought stock in those days bought it except under pressure of fraud?

MR. BLOCK: Except possibly members of management. There were some purchasers by insiders during that period. I don't think that is really an issue, because Mr. Raichle in his 167 report --

THE COURT: It may not be an issue, but it is a surrounding circumstance that I would like to be familiar with.

MR. BLOCK: I would like to refer Your Honor to Mr. Raichle's Section 167 report. I

C4 believe the passage is on Page 4 in which he speaks of the bizarre accounting practices of Stirling Homex in recording sales. Stirling Homex's products were, as I'm sure Your Honor knows, modules used for dwellings. And these modules were sold mostly to local housing authorities. Stirling Homex used to record these modules as sold when they came off the assembly line and were tagged with the name of a prospective purchaser. However, most of these transactions were so-called turnkey transactions, and the company was not entitled to be paid for its product until the modules were delivered and installed. And relatively few of them were so delivered and installed during the period to which I refer, and virtually none of these sales ripened into collections and into money.

Now perhaps that is a rather free paraphrase of what Mr. Raichle says in the report, but the reason that I said that there is no issue on that score about the security holders being defrauded is that Mr. Raichle acknowledges the infirmities, to put it mildly, of the company's

accounting --

THE COURT: That doesn't prove that because a purchaser purchased that stock that they relied on that.

MR. BLOCK: The market relied on it, Your Honor, because what the market goes by are the reported sales and income of companies like this, and when companies put out audited figures and interim figures, whether audited or not, that's what the market goes by. It doesn't have anything else to go by, and this company during the period showed an ascending curve of sales and income.

THE COURT: We are not talking about the market. We are talking about the people who bought stock.

MR. BLOCK: With all respect, Your Honor, I think what the authorities say on this subject -- and I will be very glad to submit a brief on this point -- is that people who buy securities in the open market are entitled to rely on the integrity of the market price as reflecting valid information disseminated by the issuing company. In this instance the information disseminated by the issu-

ing company in the form of financial statements was invalid. The sales were fictitious --

THE COURT: It is not an issue here, but it is a circumstance that I would like to be familiar with.

MR. BLOCK: Right, Your Honor, and I hope I have explained that to Your Honor's satisfaction. At any rate, the market was defrauded and people who relied --

THE COURT: I haven't got the class action. That's in the Southern District of New York.

MR. BLOCK: That's right, sir.

THE COURT: The issue before me on this motion is: How shall they be classified? As general creditors or subordinate?

MR. BLOCK: Correct.

Now I say, Your Honor, that justice plainly calls for recognizing these defrauded security holders as creditors. The preferred shareholders--there are both common and preferred stock outstanding of Stirling Homex--the preferred shareholders contributed twenty million dollars of fresh capital to this company less than a year before the

bankruptcy. That was under a public offering of securities. That was an underwriting led by Merrill Lynch, and these shares were sold on or about July 29, 1971.

All the shareholders, common and preferred shareholders, who acquired their shares during that period were grievously imposed upon.

Now in almost all instances, certainly all that I know about in recent years, where this issue has been presented in the case of bankruptcy reorganizations, provision has been made for defrauded security holders of the issuer by offering a compromise in the plan of reorganization, and that, Your Honor, is what I want to suggest today, that you permit me to explore with the Trustee and with the attorneys for the general creditors. The alternative is to litigate a number of rather thorny issues for adjudication by Your Honor. One of those issues is whether recognition of the security holders as general creditors, *pari passu*, with trade creditors and bank creditors and the company's surety would be in conflict with the absolute priority rule, which was announced in

Case against Los Angeles Lumber Company and Consolidated Rock Products Company against DuBois. We say that it is not, but there is not a vast body of controlling law on that subject. The Supreme Court has addressed that question only once, and that was a number of years ago in a case involving a bank which one of the creditors, in the brief that he handed me a little while ago, one of the creditors' counsels maintains is distinguishable, but I don't want to get into that now.

Mr. Raichle mentioned that one of the defrauded security holders' lawyers, and I think he was referring to me, has estimated the claims of the security holders class in the neighborhood of a hundred million dollars. And I acknowledge responsibility for that estimate. This is a very hard figure to arrive at, and maybe it should be called a "guesstimate," rather than an estimate. But a great many shares changed hands during this period. In addition to the preferred stock that I mentioned before, there was some four million shares of common stock in the hands of the public--

A 220

THE COURT: I don't think we ought to spend any time on determining the amount. The question remains the same regardless of the amount.

MR. BLOCK: I wanted Your Honor to have some ideas as to the magnitude of what we are talking about.

THE COURT: I think it is big. That is enough.

MR. BLOCK: If Your Honor were to look with favor on the approach to this problem that I suggested before, that is, that an attempt be made to negotiate some provision for the claims of these defrauded security holders, and I believe from some discussions that I have had with Mr. Raichle, that he might not be unresponsive to that approach. Any such compromise or settlement, of course, would be presented to this Court on notice to all the affected parties in interest.

The alternative, I think, would delay distribution and wind-up of the reorganization for a rather lengthy period.

THE COURT: The reorganization is over.

MR. BLOCK: The reason that I say that,

sir, is --

THE COURT: This is no longer in reorganization. They are bankrupt.

MR. BLOCK: My understanding was that this company is to be liquidated under Chapter X, and that Your Honor is not going to convert this proceeding into ordinary bankruptcy. So I was using reorganization in the statutory sense. I understand the company is not going to emerge and continue to do business. Mr. Raichle told us he has only seventy-one modules left. It is hardly enough to engage in business.

THE COURT: I know.

MR. BLOCK: The reason that I say that distribution and wind-up or liquidation would be delayed for a considerable period of time if this issue cannot be compromised is that it appears that the defrauded security holders were never adequately notified of the call for claims some four years ago, and of the related bar date for the filing of claims. And I say that for two reasons: In the first place, the language of the bar order, and that is Your Honor's order of

December 11, 1972, is easily read, in my humble opinion, as applying to the claims of stockholders, qua stockholders; that is, applying only to their equity interests -- that the claims that they might have arising out of their stock purchase claims is grounded in fraud.

The language of the order, Paragraph 1, which is the general bar provision, says: "All proofs of claims of creditors against the debtors or their property, of whatever character, either in tort or in contract, fixed or contingent, liquidated or unliquidated, other than those founded on," and I am omitting here a reference to bonds, "other than those founded on shares of stock, shall be filed with the Trustee," et cetera, "on or before February 19, 1973."

Now I say, Your Honor, that this language could very easily be read as excluding the kinds of claims that we are talking about, because many people, particularly laymen, could easily think that a claim for having been induced to buy securities through fraudulent financial statements of the issuer is a claim founded on shares

of stock, and certainly arises out of the ownership of the shares of stock. When this bar order was issued, our Jezarian action had been pending for about over six months, and certainly the existence of this kind of claim was known to all concerned, because Stirling Homex was a defendant in that action at the time. And the nature of the company's bookkeeping and the accounting, I think, was also well known at that time. I don't want to belabor the point, but what I am trying to suggest to Your Honor is that in view of the well-known existence of this kind of claim possessed by thousands of shareholders, clearer, more informative language could have been chosen, to put it mildly.

To put it perhaps more clearly, I think the bar order was quite inadequate. It didn't meet the requirements of due process in informing the person supposedly barred that their claims were encompassed by that order. In fact, with regard to the people for whom I am speaking, it would appear that the bar order wasn't meant to apply to this kind of claim at all, but only to the stockholders equity interests.

THE COURT: The question here is not whether you can file a claim, but if you file a claim, how shall it be classified?

MR. BLOCK: Well, I don't know that Your Honor has to reach that question if the defrauded security holders were barred back in February, four years ago. In fact, a brief submitted by Mr. Turner takes that position. He said, "We don't belong here at all, because the curtain fell on our claims in February of 1973." And I am responding. I think that is a threshold question, if we want to be heard in this court to demonstrate that our claims are still alive, that we have some standing here.

THE COURT: He takes the position even if you do file a claim, you should be classified subordinate to the generally-conventional --

MR. BLOCK: That is another position that he takes. But one question is whether we have been barred, and I say we haven't been barred, because although we could have filed claims at that time, and some six claimants out of the thousands and thousands of potential claimants in this situation

A 225

did actually file claims totaling some \$21,000. According to Mr. Raichle's Section 167 report, there was inadequate notice that claims had to be filed at that time.

THE COURT: I understand that, but I am saying that I don't think that that is an important issue at all. The question is supposing you are considered today to be a timely-filed claim. This question still remains. The important question that I have got to decide is how shall it be classified for payment?

MR. BLOCK: That is true with regard to the six claims that are in the house now.

THE COURT: I thought I made it clear what I meant.

MR. BLOCK: I'm sorry if I am obtuse, Your Honor.

What I am trying to say is that I don't believe that any of these defrauded security holders who haven't filed claims are barred today. And if their claims are not dealt with by compromise, I don't see how distribution can be made until there is another call, I would say an initial

A 226

call for claims from defrauded security holders because they have never properly been notified, or at least those who weren't stockholders --

THE COURT: How shall they be classified?

MR. BLOCK: I say they should be classified on a parity with general creditors.

THE COURT: I know you say that, but merely saying it doesn't prove it. I thought you would have something in support of that.

MR. BLOCK: I submitted a brief to Your Honor on this.

THE COURT: I haven't read it.

MR. BLOCK: There isn't a great deal of learning on this question, I have to confess. As I mentioned earlier in my remarks, there is a Supreme Court decision. I believe it is a 1937 case. It is cited in my brief, Oppenheimer against some national bank in which the Supreme Court ruled that a claim of a defrauded stockholder of the bank ranked on a parity with the claims of general creditors of the bank. And the only case in which the Supreme Court has addressed this question, it has ruled in favor of the people that

A 227

I am speaking for here, the defrauded security holders. So I would say to Your Honor that you should rule in favor of treatment of these claims on a parity with those of general creditors on the authority of that case. And I say the reason and the logic and the justice of this situation also points to that result, because these stockholders were as grievously injured and as seriously damaged as the banks and the other creditors who have filed claims. In fact, without their money there wouldn't have been any Stirling Homex, and as I indicated to Your Honor before, twenty million dollars came in from security holders in a new issue less than a year before the bankruptcy.

May I indicate to Your Honor the procedure that I think could be followed in accomplishing a compromise of these claims?

THE COURT: You can put your argument any way you want to.

MR. BLOCK: If we were to go down the road that I am suggesting in an attempt to work out some compromise of these claims as was done in the other major reorganizations or liquidations

of this type, whatever they were, and that includes the Four Seasons case, Westec, Equity Funding, and several others which are also cited in my memorandum, where the judge did not have the burden of deciding this question which Your Honor just asked me to address, because the issue was settled, and in all of those cases, substantial provision was made out of the assets of the estate in bankruptcy for this category of claimant.

Now if that were done here, it would not have to be done through the plan of reorganization. That is to say, the Trustee would not have to solicit claims anew, as I suggested before. He would not have the burden of calling for those claims and processing all of those claims, and Your Honor would not have the burden of passing on disputed claims, if we were to use the Southern District Court class actions as a vehicle for accomplishing this putative settlement.

Once Your Honor had approved this hypothetical settlement in this court, we would then put it before Judge Bonsal in the Jezarian against

A 229

Csapo action. And then the settlement could be accomplished, using the mechanics and the machinery of Rule 23 of the Federal Rules of Civil Procedure.

It could be accomplished as a class settlement in that action by the simple device of Mr. Raichle's consenting to be rejoined as a defendant, because we dropped him as a defendant at Judge Bonsal's insistence after Mr. Petrillo filed an affidavit calling attention to the stay that was outstanding against prosecution of claims against Stirling Homex. That is a long detour. At any rate, the procedure that I am suggesting is settlement, Your Honor approves it in your role as bankruptcy judge. We then take it before Judge Bonsal in the Southern District. Mr. Raichle is reinstated as a defendant in the Jezarian case for purpose of accomplishing this settlement, and the settlement is then made on notice to all of the members of the class that I described before, the purchases during that period, March 16, 1971, to July 10, 1972, and it would be binding under the provisions of Rule 23 on all of those persons except those who elected to be excluded or to opt

out under the provisions of Rule 23. And experience in these matters teaches that few, if any, people opted out of a class when there is settlement money to be distributed. Once that settlement was approved by the Southern District Court, that would be the end of it, as far as this proceeding was concerned, except for the payment of the money, whatever it was, that was to be distributed by the estate in bankruptcy.

I think in that fashion equity could be done for the defrauded security holders with minimum of delay and a minimum of wear and tear and diversion as far as this reorganization proceeding is concerned.

Thank you, Your Honor.

MR. BADER: May it please the Court, I am I. Walton Bader of the firm of Bader and Bader. I also represent a class of defrauded stockholders. But I am not involved in the class action in New York. And I submit that the leading case in connection with this matter has not been brought to Your Honor's attention.

THE COURT: You mean there are two class

actions?

MR. BADER: No, Your Honor. There is a class action pending in New York. I am not involved in the New York class action. I am merely involved in this bankruptcy. I represent the stockholder, and I have filed a proposed adversary proceeding in this proceeding, in the bankruptcy. My motion in this case, while I agree that these stockholders may be defrauded stockholders, but if there is going to be an adjudication that these are defrauded stockholders, such an adjudication must be made here in the bankruptcy court and not in the procedure in the Southern District.

I would like to hand up to Your Honor the latest decision on this point in the Second Circuit, and that is Matter of Cartridge Television, Inc. That happened to be my case, so I can claim to be an expert, because I did it once before, which is the definition of expert that some wag told me.

THE COURT: I heard other definitions.

MR. BADER: Could I have permission to hand this up to Your Honor?

(Document handed to the Court.)

MR. BADER: Now that decision, Your Honor, specifically says two things. It says first, that if a person claims to be a defrauded stockholder, he can't be a defrauded stockholder until there is an adjudication that he is so defrauded. Right now, even though it is clear from the record that there was considerable fraud that went on, there must be first, as Your Honor pointed out, proof that each particular person involved relied upon these false and misleading statements.

Now that decision and that determination has to be made here in the Bankruptcy Court. Now that was precisely what was done in Equity Funding. In Equity Funding, we had a situation very, very similar to what we had here. We had a class action pending in Equity Funding for fraud. We had clear evidence of fraud because of the criminal convictions of the people involved, Mr. Goldblum, et cetera. And we had a bankruptcy proceeding which was before the Bankruptcy Court and with a Trustee appointed, Mr. Leffler, who was Trustee at that time.

The only difference between Equity Funding and this proceeding is that Equity Funding became reorganizable, and the company was reorganized, while in this case we can't reorganize Stirling Homex, because the company is hopelessly insolvent. But that doesn't change the rule.

Now in Equity Funding, there were hearings, there were arguments with respect to whether or not the stockholders were defrauded stockholders. Had the case not been settled as it was in that case, Judge Pregerson, who had the bankruptcy proceeding, would have had to have a trial on the issue as to whether or not these stockholders were defrauded stockholders. And until the stockholders are determined to be such defrauded stockholders, they are not in a position to file a claim, because if they file a claim as stockholders, qua stockholders, their claim, of course, is out. There is no equity.

Mr. Raichle, the Trustee, clearly pointed that out in his testimony, where he pointed out that there would be obviously only a thirty per cent dividend even if these defrauded stockholder

claims were not considered.

Now the total amount of defrauded stockholder claims, according to Mr. Block, and I don't question his estimate, is a hundred million. I don't know whether a hundred million of such claims can be proven. Maybe the claims will be twenty million. Maybe they will be ten million. Maybe they will be five million. Maybe they will be one million. I don't know what a trial is going to show, but that is the only way that we can proceed.

Now we come to the question of class claims. Now in the Cartridge Television as well, Bankruptcy Judge Herzog held, and there is legal authority for what he did, to the effect that you don't file a class claim for defrauded shareholders. You don't proceed that way. What you do, as far as I'm concerned, and, of course, this has not been determined any place -- all Judge Herzog said when I tried to proceed by following a class claim that that wasn't the way to do it. And that matter never reached the Court of Appeals, unfortunately, because subsequently in the parallel class action that we had had, we withdrew our request for class

certification, so that there was no pending class action. And, therefore, the Court of Appeals did not reach the question as to whether or not a class claim could be interposed in the bankruptcy.

THE COURT: I think I ruled on that in this case.

MR. BADER: Your Honor did rule that way. Your Honor ruled exactly the way Judge Herzog ruled, and as I say, that apparently is the law. So the way you do it, as I see it, is that you --

THE COURT: Why tell me about what Judge Herzog did when I did it myself?

MR. BADER: Well, only because Judge Herzog's case went to the Court of Appeals, and the Court of Appeals impliedly affirmed what he had done.

In any event, Your Honor, I am aware of what you had done in this case. I think what you did was correct.

THE COURT: Thank you for the compliment. A lot of the others don't think so.

MR. BADER: Mr. Johnson told me that over the telephone as well. He has been very helpful

A 236

to me in this entire proceeding.

Now what I say is this. The way I say that this matter should be handled is as follows: I have attempted to file an adversary proceeding as Your Honor knows, and it is before Your Honor now for signature. That adversary proceeding should be filed, and the case should be tried. And then Your Honor is in a position to determine whether they are defrauded stockholders, or whether they are not defrauded stockholders. If they are defrauded stockholders, then I maintain they proceed pari passu. If they are not defrauded stockholders, and Your Honor so finds, that's the end of the story. But in any event, the determination must be made in this proceeding and not in any other proceeding.

Now I also want to tell Your Honor about the discussion that I did have with Mr. Johnson, where he had made a suggestion to me. And if I'm unfair at this point as to what I say, Mr. Johnson, I would appreciate your interrupting me. He had made a suggestion to me, which I do not oppose, the question as to whether or not if

these stockholders are, in fact, defrauded stockholders, they have a right to participate *pari passu*, or whether they should be considered to be a sub-class behind general creditors should be determined first without us going through a long plenary trial as to determine whether these people are, in fact, defrauded stockholders.

Now I go along with that suggestion, if Your Honor goes along with it, but in any event, the suggestion that Mr. Block made that this matter go to the class action in New York appears to me totally unwarranted in law based upon the law as I understand it.

Thank you, Your Honor.

MR. JOHNSON: In responding, I think he is accurate in quoting me. I think the Court has accurately stated the proposition, too. If this Court finds that the allegedly defrauded shareholders cannot participate on an equal basis in the distribution with the general creditors, then all of these other proceedings are academic, and, therefore, is quite correct. The Trustee, and the Trustee, himself, repeated it, if the Court

can rule on the threshold or essential question, all of these matters become academic should he rule that the shareholders allegedly defrauded may not share on an equal basis with the general creditors.

MR. GOODMAN: If Your Honor please, my name is Henry Goodman. I am with the law firm of Zalkin, Rodin & Goodman. We represent Chemical Bank in these proceedings.

We are opposed, Your Honor, to the classification on a level of parity of any class of defrauded shareholders with those who can conventionally be considered creditors of this estate, namely, the bank who loaned the money to the company and who assumed the legal position of a creditor of this company, trade creditors of this company and the bonding companies who have claims arising out of indemnification agreements, which they issued on behalf of Stirling Homex.

We also believe, Your Honor, that were it not for the settlement that the banks made with the reorganization trustee, there would be no estate for unsecured creditors to fight over.

A 239

Nor would we have Mr. Block here today or Mr. Bader.

Indeed, I am aware of a letter that Mr. Block wrote to Mr. Raichle, dated December 21, 1976, in which Mr. Block admits that fact, for he says in that letter: "Until early this year, it appeared that priority claims asserted by Stirling Homex's bank creditors would exceed the amount of distributable assets so that general creditors would take nothing. In consequence, however, of your advantageous sales of the bulk of the bankrupt's inventory of unsold modules and of your settlement with the banks whereby they have accepted general creditor status, the estate now presents an altogether different picture."

And I will end my quote at that point. So that while Mr. Block -- and I don't think he will deny -- knew when Stirling Homex filed a Chapter X Petition on July 10, 1972, while he knew that Homex was in a Chapter X proceeding since that time, it is only because there appears something to fight over at this date, five years after the event, that he now comes into this court and

seeks to negotiate with the Trustee and with creditors of Stirling Homex, conventional creditors of Stirling Homex, a claim which he has never asserted in these proceedings before.

There is no question that Mr. Block has been aware of these proceedings since July, 1972.

Now Mr. Bader called Your Honor's attention to the fact that in connection with two claims filed as class claims in this estate by shareholders, you disallowed class status. That is part of the record of this case. Your Honor's determination has never been appealed. It is the law of the case.

On behalf of the banks, we do believe and would appreciate the opportunity to brief the matter to Your Honor. We do believe that the bar order does effectively preclude the claims that are brought by Mr. Block and Mr. Bader to Your Honor's attention.

Mr. Bader is somewhat less than candid. He spoke of a class that he represents, yet the statement that he filed with Your Honor shows that he represents one holder, a Mrs. Dixon, of preferred

A 241

stock, and that he intends to represent a class.

Mr. Block argues that Your Honor permit the settlement or liquidation of the shareholder claims in the class action in New York. Mr. Bader takes exactly the opposite position. He said Your Honor should do it in the Chapter X proceedings of Stirling Homex. I think all of that quite clearly points up the fact that when Your Honor has before him what is essentially a liquidation bankruptcy, that claims such as the claims that are asserted by Mr. Block and by Mr. Bader should not be permitted to compete on a parity with general creditors, and that if Your Honor is disposed to permitting such claims to be filed at this late date, they be subordinated in the right of payment and right of distribution from the assets of the estate until all other unsecured creditors have been paid in full.

Thank you, Your Honor.

MR. TURNER: My name is Frederick D. Turner of the firm of Brown, Kelly, Turner, Hassett & Leach. I am here on behalf of the general creditors, Travelers Indemnity Company,

which was the bonding company for Stirling Homex on numerous of their projects around the United States. And as such, we paid numerous claims of materialmen and suppliers of Stirling Homex and also we finished a number of the projects and have an unsecured claim before this court. We oppose the inclusion of the shareholders here to participate with the other general creditors on a parity.

I believe at the threshold, Mr. Goodman has already mentioned the fact of the bar order. And I would also add that the facts in this case with respect to the claim represented by Mr. Block, there certainly has been laches in the classic sense of the word here for him not coming forward and his group coming forward and participating in the bankruptcy in an earlier stage. They have been sitting on the fence looking which way is the best way to go. And I think this is true of the general class of creditor that is represented by the shareholders. They are the people who are sitting on the fence in this whole proceeding. They buy stock with the hope and expectation that there is going to be a rise in the profit, that

there is going to be a profit in the sale of the stock. On the other hand, the general creditor sells goods, lends money to the debtor, and his only hope is to get back what value he has put into the corporation.

And on the other hand, we have here in this proceeding the general creditors represented by my client, by Mr. Goodman's client, and others who have given value and expect to get at least a portion of it back, and at the initial instance, the class expect to get the full amount back. On the other hand, shareholders in this situation hope to get the best of both bargains. If you are a shareholder, you get the profit. If you are not going to get a profit, maybe you can come back and say, "I have been defrauded. And then I will come in as a general creditor, and at least I will get back something."

And I think the cases that have been cited-- there is nothing on point here directly. This Court has this first impression.

The Oppenheimer case cited in Mr. Block's brief is the only case which has dealt with a

shareholder and creditor situation under the National Banking Act in 1937. There the court was dealing with a statute that had a ratable distribution. And it was two years later in a Chapter X proceeding that the Supreme Court decided that the "ratable definition" of "distribution" was not the one to use. It was "fair and reasonable," I believe, was the phrase -- "fair and equitable" was the standard to apply in the distribution of assets in a Chapter X situation.

We have the other cases which have been cited, have permitted the Trustee to propose and carry out a settlement. But never has this court or any court decided firmly as to who should have the priority. And I believe that the court has the ample opportunity here to weigh the equities, to weigh the statute, to weigh the bankruptcy law. And the courts over the years have always treated the shareholders as last in line to participate in the distribution. I see no reason that the court in this situation should treat the creditors, the shareholders in any other way than to leave them as a subordinate class of creditors. And I

urge this court to treat the trade creditors as having the absolute priority, which the Chapter X cases have always recognized since the early part of this century here, and that the shareholders should be subordinate to them.

Thank you, Your Honor.

MR. CORDES: My name is Alexander Cordes, and I am here representing the Marine Midland Bank. I simply want to join in the comments that Mr. Goodman has made and that Mr. Turner just made, that the bar order on the unappealed order in the Jones and Goldberg cases, and the laches of the parties, bar any consideration of these claims; that the purpose of a bar order is to prevent fencesitting. And that on the merits, in any event, the Oppenheimer case, which incidentally, is Oppenheimer versus Harriman National Bank, was under a different statute where a different standard was applied. The statute under Chapter X deals with fair and equitable distributions, and the rule of absolute priority applies in such a case, so that the stockholders here have no standing.

If the Court will permit us, I would like an opportunity to file a brief, written memorandum embodying those points.

THE COURT: How long do you want?

MR. CORDES: May I have ten days?

THE COURT: I will give you a week.

MR. CORDES: Thank you.

MR. GOODMAN: May we have a week, Your Honor?

THE COURT: Everybody can have one week.

MR. JOHNSON: We would like a few days thereafter to respond.

THE COURT: All right. One week plus two days.

MR. BURNS: I am Edward Burns of Nixon, Hargrave, Devans & Doyle. I appear on behalf of Lincoln First Bank, Your Honor.

We strongly oppose the applications of Mr. Block and Mr. Bader.

THE COURT: I think they all strongly oppose it.

MR. BURNS: I would further point out to the Court that I am informed that the clients

A 247

Mr. Block represents, who themselves are representative of the class he talks about, were given actual notice of the proceedings in this bankruptcy matter. So his comment about the hypothesis that perhaps the initial bar order was not properly worded, I think, is just that theory. In fact, the Jezarians, I am informed, were given actual notice of what has transpired in these proceedings.

MR. RAICHLE: If I might have just a word, Your Honor. I consider myself an independent, impartial Trustee with a duty to represent all creditors, all parties in interest fairly and equitably. That is not to say that I can't take a position. That is not to say that I don't have my views about this matter. But in the interests of expediting this complicated situation, I would like, if there is no objection, and I can't see why there should be, to have it understood by all of us here that my testimony as given on the other motion here today and the Exhibits to the extent they are relevant and material, may be considered in connection with this motion as to the classification of creditors. Is there any objection to

that?

MR. BADER: I have no objection.

MR. RAICHLE: Parts of it are irrelevant, but the 167 report and its detail is relevant. And the insolvency and the necessity for liquidation rather than reorganization is material. So may that be considered?

THE COURT: Yes.

MR. RAICHLE: Just a word about this matter of notice. If Your Honor will go back in thought and memory to the time of my appointment, there was no evidence before the Court that there existed a class of defrauded stockholders. I entered upon the performance of my duties with the usual information, sources of information. I knew that I could find from the company's books and records, at least in the first instance, the names and addresses of the creditors. I knew that I could find from the books and records of the company and the transfer agent the names and addresses of the stockholders of record, the two classes of parties in interest contemplated by the provisions of the Bankruptcy

A 249

Act providing for notice. I had no information in the early days or for considerable months after my appointment, and you might say years after my appointment, there existed the bases for a claim of fraud on the part of stockholders. I held extensive hearings in late '72, early '73, and I think, to some extent, a year or two later the Securities & Exchange Commission asked me to step aside in the matter of my investigation so that its representatives could conduct their investigation, making the argument which had sense to me at the time and makes sense now, that they could do it in secret, whereas I was doing it in open court, and it was being spread on the pages of the paper.

~~It was not until the SEC filed its report~~
~~some two or three years later that the detail of~~
~~the alleged fraud became known.~~ I had intimations. I had reason to believe shortly before the filing of the SEC report that there might be some instances of fraud, but what was I to do, I asked rhetorically, in the matter of notice. I couldn't send notice to people who had bought stock and

sold it and were no longer stockholders. I had no way of knowing who they were except possibly to go through the expensive and unheard of undertaking of tracing out every stockholder, that is, a person who had been a stockholder. I say to them there isn't any basis for a claim at this late date, in my opinion.

I'm also of the opinion that this situation cries for a settlement. I would like to see it settled. On the other hand, I can't shrink from pushing for a decision because this is going to unduly delay an unfortunately long tenure by me, in an effort to clean up this situation.

Now I don't rely, as far as I'm concerned, as long as I have standing, to the bar order. The creditors have a perfect right to rely on it. I don't rely on the bar order. I rely on the fundamental proposition that these people, as I said before, can't bootstrap themselves from the status of stockholders into the role of creditors, and if they are to become creditors in any sense of the term, and Your Honor has to decide the matter, it should be decided that the conventional, as I put

it, or the orthodox creditors, are in a class ahead of them.

Now there are just one or two odds and ends. In Mr. Block's written presentation, which I take is part of this record here -- let the record show that Mr. Block is nodding his head "yes." He says the fact that the identity of the so-called defrauded stockholders was fully known or ascertainable by the Trustee at the time when he sent out his notice of the time within which to file claims. I dispute that. It wasn't fully known to me. It wasn't known to me at all. I don't think it was readily ascertainable, and I have read no case where a Trustee or one obliged to send the notice has been driven to the transfer sheets involving thousands of transfers and the names of thousands of previous stockholders and to spend thousands of dollars to ascertain who they may be, and then send notices to them inviting them to make claims. But as I say, I don't stand on the bar order as far as I'm concerned. But I do stand on the proposition that there should be a classification of these creditors, so-called,

A 252

subordinated, in effect, to the claims of the conventional or orthodox creditor.

MR. BLOCK: Your Honor, may I be heard?

THE COURT: Proceed.

MR. BLOCK: I haven't succeeded, apparently, in making clear what my proposal is in the way of a settlement of this situation.

THE COURT: What makes you think you haven't?

MR. BLOCK: Because practically everyone who rose to speak after me importuned Your Honor to decide this question of the application of the absolute priority rule. The whole concept of a settlement is to avoid deciding and adjudicating questions, particularly difficult questions.

Now in all the other reorganizations, or liquidations, that I mentioned when I addressed you before, and they are all cited on Page 11 of my memorandum, that is, Westec, Four Seasons, Farrington Manufacturing, American Loan and Finance Company, Dolly Madison, and Equity Funding. This issue was not decided by the Bankruptcy Court or by any court. Why wasn't it decided?

A 253

It wasn't decided because the question was settled. When you settle a case, you don't decide the underlying issues that go to liability and damage.

Now Mr. Bader told Your Honor that the issue of priority, well known, should be determined here rather than in the Southern District Court. I never suggested that Your Honor shift that issue to Judge Bonsal in the Southern District Court.

Mr. Bader misunderstood me completely -- undoubtedly, my fault. I didn't make myself clear. Under my proposal, and I'm not sure of this, but I think I understood Mr. Raichle correctly when he said that he favors settlement. Under Mr. Raichle's view, likewise, there would be no occasion for this issue to be adjudicated. Once it is adjudicated, Your Honor, the basis for settlement is eliminated. If Your Honor were to rule in favor of the people that I am speaking for, their claims would eat up the whole estate. I don't understand why the gentlemen sitting at that table are so anxious to have that issue decided. It could very well be decided following

the Oppenheimer case in the United States Supreme Court in favor of the defrauded security holders. If their claims are eighty to a hundred million dollars or maybe more, there is going to be very little for the banks and all the rest of the creditors here.

THE COURT: I think that they probably were confident that the Oppenheimer case didn't apply.

MR. BLOCK: Even if it didn't apply, then it is a complete tabula rasa, a blank slate, and it could go either way.

Mr. Goodman made much of the proposition that there wouldn't be any estate to fight over today for general creditors but for the settlement that his clients made with the Trustee. I concede that, but I don't see what that has to do with the issue before Your Honor. The estate is whatever it is today. That is the situation, and Mr. Goodman's clients made this settlement for reasons that were good and sufficient to them. I am sure they didn't think they were throwing away any money or position by making that settlement. If they

A 255

thought that their priority claims were all that great, they wouldn't have agreed to come in as general creditors, *pari passu* with the rest of the general creditors.

I have also been charged with laches. That is not so serious as charging all of the defrauded security holders with laches because neither I nor the three people that I represent specifically here filed claims before February of 1973. Well, how all of the thousands of widows and orphans out in the boondocks can be charged with laches because that is what the argument really amounts to. I am not a claimant here. I am not their lawyer for this purpose.

THE COURT: Some of them are represented by lawyers, and it is strange to me that their claims weren't filed here as a matter of precaution.

MR. BLOCK: They weren't represented by lawyers, Your Honor.

THE COURT: I thought you represented the class.

MR. BLOCK: I represent the class in

Jezarian against Csapo for the purpose of pursuing 10(b)(5) claims in a civil suit pending in that court. Nobody has engaged me to stand up here and say --

THE COURT: You are contending the same thing there.

MR. BLOCK: That isn't the bankruptcy proceeding, Your Honor.

THE COURT: Oh, I understand that.

MR. BLOCK: I never undertook to represent anybody in the bankruptcy case. And to hold all of these people barred because only six people filed claims -- just think of that, Your Honor. Only six people out of thousands and thousands of potential claimants. Why didn't they file claims? There are two --

THE COURT: Maybe they were confident that some lawyer would come along and include them in a class action.

MR. BLOCK: There are two good reasons in my estimation why claims haven't been filed by all of these people. One was that they didn't think there would be any general estate because

Stirling Homex was known to be a complete disaster. It was only because of the Herculean efforts made by Mr. Raichle, which resulted in the conversion of all these rotting modules. I don't know how he ever did it -- into millions of dollars.

THE COURT: They weren't all rotting, because he got a number of millions of dollars out of it.

MR. BLOCK: And the agreement he made with the banks, that imparted some equity to this situation, but that doesn't mean that we are playing fast and loose. Mr. Turner made some point that we are "sitting on the fence." I don't understand this at all, as if there was some sort of election of remedies situation. What other course of action was indulged in in lieu of filing claims? People didn't file claims because it didn't seem to be a worthwhile activity. There didn't seem to be any --

THE COURT: I have no evidence of that. That is your statement.

MR. BLOCK: Well, that's right, Your Honor, but I was there. I was one of those that didn't

do it, so I know why I didn't do it.

THE COURT: Then you are speaking for those in the class action?

MR. BLOCK: Pardon me, sir?

THE COURT: Then you are speaking for those in the class action?

MR. BLOCK: I am here, Your Honor, if you would indulge me, as a friend of the Court. I don't have any technical standing here on behalf of that class.

THE COURT: I don't understand what you mean by that.

MR. BLOCK: Your Honor has ruled that class claims cannot be filed in this proceeding, and I respect that ruling. I'm not contesting that.

THE COURT: And you are not speaking for those people at all?

MR. BLOCK: Yes, I am.

THE COURT: All right. That is what I thought.

MR. BLOCK: Now I am not insistent either that anything be done in the Southern District

A 259

Federal Court. This was simply a suggestion that I made in the interest of speed, and I thought in the interest of relieving this Court and the Trustee of all the minutiae and detail of calling for claims and processing claims. The way this has been done in the other proceedings that I mentioned before, the one cited on Page 11 of my memorandum, is this: There was a new call for claims pursuant to a provision and a plan of reorganization, which offered to compromise the claims of defrauded security holders on a basis set out in the plan.

THE COURT: In other words, that you get a fund distributable to --

MR. BLOCK: Yes, but it can be done by this Court. It has been done by the Bankruptcy Court in these other proceedings. And it is a matter of indifference to me whether it is done by the Bankruptcy Court. I suggested doing it in the class action in New York, because I thought it would be simpler and more expeditious.

Now I'm sorry that I have to take issue with Mr. Raichle on a couple of points that he

A 260

stressed.

THE COURT: Don't be sorry about it.

MR. BLOCK: Well, Mr. Raichle is a very nice man, and he has done a splendid job here, and I am very fond of him.

THE COURT: Well, if he is asserting something that has no reality to it, don't have any hesitancy in opposing it, and I am sure he wouldn't want you to.

MR. RAICHLE: Of course not.

MR. BLOCK: Mr. Raichle said when the bar order was applied for and ended here, how was he to know about any claims of defrauded security holders. I addressed that point before. Our action was pending at that time, and Stirling Homex was a party to it.

MR. RAICHLE: But your clients got a notice.

MR. BLOCK: But that isn't the point that you made.

MR. RAICHLE: It is a point of fact.

MR. BLOCK: The pendency of our suit was notice that Stirling Homex was liable to claims of defrauded security holders all over the country.

A 261

THE COURT: And if that was known, I'm surprised that no one filed a claim despite the bar order, whether they were barred by it or not. As a matter of precaution, it is surprising to me that they didn't file a claim, not one of them.

MR. BLOCK: Your Honor, the banks were asserting priority claims for thirty-eight million dollars on this estate.

THE COURT: They were asserting it -- you weren't bound by their assertion, were you?

MR. BLOCK: Of course, we weren't bound by their assertion.

THE COURT: I never knew lawyers to be modest about asserting claims before.

MR. BLOCK: The estate seemed to be heavily insolvent. There didn't seem to be anything for general creditors, and that was the appearance of the situation. I will grant you, Your Honor, that I did not make a study of the situation. I never went into the merits of the banks' priority of claims. I assumed if they asserted these claims, that there was some sound basis for them, and maybe I shouldn't have, but I think that was

A 262

the impression that the world, in general, had.

At any rate, bankruptcy courts are, in a sense, courts of equity, and I don't know that all of these people should be penalized because of a mis-impression that was harbored not only by me, but by thousands of other people when only six claims totaling \$21,000 in total were filed in pursuance of this call for claims.

Now Mr. Raichle also said that he didn't know who the former shareholders were and had no means of ascertaining their identity. I have to disagree with that. The transfer records of the company which were in the possession of the Trustee are easily obtained by the Trustee from the transfer agent. I think it was the Chemical Bank, and indicates the name of every shareholder who ever was registered as such, and all you have to do to find out who the former shareholders were is to look at the transfer records. It is true there are a lot of names to be taken off, but it certainly is something that is doable. All it takes is an expenditure for some clerical assistance. And the Supreme Court has said

that reasonable notice shall be given to everyone, reasonable personal notice shall be given to everybody whose name and address is ascertainable with reasonable effort. That is Mullane against Central Hanover Bank and a number of cases which follow it.

An analogy as to what has happened here, I think, is what happened in the Westec proceeding in Texas. Now in that case there, too, there was a --

THE COURT: Is this a District Court case?

MR. BLOCK: Yes, sir.

THE COURT: He is just another guy grasping for the truth, the same as I am. If it was an Appellate Court, I would have a little more respect for it.

MR. BLOCK: I think you might find this helpful. I'm not presenting this as a ruling within precedential effect. It is a similar occurrence. In Westec there was a call for claims, and few, if any, claims were filed by the defrauded security holders. Then the Trustee filed his Section 167 report, which indicated

that that company, like this one, had been guilty of issuing all kinds of false financial statements and indicating very clearly a heavy liability on the part of the issuing company, the bankrupt to its stockholders, past and present, and Judge Hannay in his order approving the plan of reorganization, which indicated provision for these defrauded security holders, said that he was extending the bar date for filing claims by defrauded security holders because he recognized that until the trustee filed his Section 167 report, very few, if any, of the defrauded security holders, would have been aware that they had such rights against the issuer. While you might say, "Why didn't they make an investigation? How could they assume that they didn't have any such rights? Weren't they guilty of laches?"

I think, Your Honor, that is a parallel situation, and that, too, is cited in my memorandum.

Now, Your Honor, I served my memorandum over a week ago, and since I am kind of in the position of a proponent here, at least, I am being

shot at by everyone else in the room, could I have an opportunity after everybody else has served his memorandum, to respond to the memoranda of the other counsel?

THE COURT: I can't keep extending the time because somebody else wants to file one. File them simultaneously. You know their positions now.

MR. BLOCK: I don't know what authorities they are going to cite.

THE COURT: You can assume if they haven't said anything about authorities that they haven't got any.

MR. BLOCK: All right, sir.

THE COURT: The extension date is a week and two days, isn't it?

MR. BLOCK: A week and two days from today.

THE COURT: That is the submission date.

MR. BLOCK: Thank you for your patience, Your Honor.

THE COURT: That is all.

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